THE

Compleat Arbitrator;

OR THE

Law of Awards;

CONTAINING,

I. Plain and eaſy Directions to all Kinds of Arbitrators; what Matters may be ſubmitted to Arbitration, and in what Manner.

II. The Nature and different Kinds of Submiſſions, the Parties to the Submiſſion, and the Office and Duty of Arbitrators and Umpires.

III. Of the right Manner of making and delivering up Awards; and how Awards have been conſtrued in Equity.

IV. The Manner of making and enforcing the Performance of Awards, when the Submiſſion has been made a Rule of Court; and the right Method of ſetting forth and pleading Awards.

By MATTHEW BACON, Eſq; *of the* Middle Temple, (*Author of the* New Abridgment of the Law, *in* 5 *vols.*)

The THIRD EDITION, with Precedents of Submiſſions, Awards and Pleadings in *Engliſh*;

To which is added

A large Table of the Principal Matters.

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THE PREFACE.

IT *is one of the greateſt Objections to our Laws, that the Way to the Knowledge of them is ſo dark and rugged, ſo full of Windings and Turnings, that the moſt Knowing very often find it difficult to be able to pronounce with Certainty, concerning ſome Points they are ſollicitous about.*

And this Difficulty ariſes not only from the complex Nature of Law in general, but likewiſe from that unhappy Frame and Texture in which we ſee our Laws compoſed.

The Knowledge of our Law muſt for the moſt part be drawn from the Books of Reports, which are now increaſed to a great Number; theſe Books contain great Variety, and almoſt an infinite Number of Caſes, ſome of them publiſhed in the Life-time of the Authors, and ſome from imperfect Manuſcripts of Perſons deceaſed, which were never deſigned for publick Uſe; and all of them collected

by Men of different Abilities and Underſtandings: For this Reaſon it is, that we ſee them labouring with Confuſion, Intricacy, and Incertainty, and contradicting each other, not only in ſimilar Caſes, but likewiſe in one and the ſame Caſe.

And hence it is, that the Method of writing general Abridgments, or particular Treatiſes on ſome general and uſeful Head of the Law, has received a Sanction; the Deſign of which being to bring together, and range in proper Order, the Caſes pertinent to any one Subject, a Perſon may the more eaſily unravel and reſcue it from this Confuſion and Intricacy, and by ſeeing all the Caſes together at one View, diſcover which of them do actually contradict one another, or only ſeem to do ſo; how our Modern Reſolutions differ from the Antient, and upon what Grounds and Diſtinctions.

And this, when done with Care and ſome Accuracy, has been always thought to be uſeful to the Profeſſion of the Law; and in this reſpect the following Treatiſe, if it ſhall be thought to anſwer any of theſe Purpoſes, will have its Share of Merit, as its Subject laboured under theſe Difficulties as much as any other.

But what is expected will chiefly recommend it, and what indeed was principally designed, is, that it will be a Means of saving the Time and Expence, which too many have unhappily experienced attends the Prosecutions of Suits in Law and Equity; and surely there needs not many Arguments to inforce its Use upon this Account.

It is true, there have been some late Acts of Parliament made, which seem greatly to facilitate the Methods of Proceeding in Law, and that several new Remedies are found out, which seem more sure and expeditious for recovering in Civil Actions, than those formerly used. But notwithstanding these, have not most Causes of Consequence which come into Westminster-Hall, *a Mixture of Law and Equity, by which, and of Necessity they must, according to the Practice of our Courts, be long in Agitation before they can be determined? Is not the Construction of those Acts, which have been made for the Amendment of the Law, and Furtheranc of Justice, as difficult and perplexing as any Part of the Law? Are not the great Questions concerning what is* Form, *and what* Substance, *as vexatious and expensive as the strict Rules of Pleading; and have not Suitors been as often disappointed by them? And as it may be*

juſtly feared, that whatever new Acts or Remedies may be deviſed, may partake of ſome of theſe Inconveniencies; ſurely it will never be leſs eligible, to do at firſt what the Judges, after ſeveral Trials and Arguments, often adviſe at laſt, viz. to compromiſe or refer the Matter; *which being agreed upon in any Caſe, that it may be done effectually, and not be the Foundation of new Contention and Debate, as it often happens by the Ignorance of the Arbitrators,* &c. *is the End of the enſuing Treatiſe.*

THE

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THE

THE COMPLEAT ARBITRATOR.

CHAP. I.

Directions to the Arbitrators.

1. ARbitrament (*Arbitrium*, *Laudum*, *Compromiſſum*), or an *Award*, is the determination of two or more Perſons, at the Requeſt of two Parties at leaſt, who are at Variance, for ending the Controverſy without publick Authority.

2. It is called an *Arbitrament*, becauſe that the Parties have willingly ſubmitted their Differences to others, to determine them arbitrarily, and according to their own Opinions and Judgments as honeſt and diſintereſted Men, and not according to Law. It is called an *Award* from the *French* Word *Agarder*, which ſignifies to *judge* or *decide*; and it has heretofore been called *Love-Day*, becauſe of the Quiet and Tranquillity which uſually followed the Ending of the Controverſy.

3. As there is no Man who has not more or leſs made Obſervations on the Proceedings of the Courts of Law and Equity, and who has not likewiſe, in ſome Meaſure, made Complaints of the Expenſiveneſs and Dilatorineſs of the Proceedings and Determinations in thoſe Courts; and who does not with (if he has any Good Will to Mankind at all) that all Men ſhould have Juſtice done them with more Expedition and leſs Expence, than attends the Proſecution of a Cauſe at Law; it will not be improper, nor I hope an unacceptable Undertaking, to endeavour, by laying down the whole Learning of *Awards* and *Arbitraments*, which hitherto has lain dark and obſcure, and as intricate and perplexed as any General Head of our Law, to aſſiſt Mankind in making them better Friends and Neighbours, and in ſecuring to them their Fortunes and Poſſeſſions, and to prevent that even this Method of determining Controverſies may not be (as it often happens) the Foundation of new Broils and Contentions.

4. For this Purpoſe (and as all Men, who are Arbitrators, are not Lawyers) I have in this Chapter particularly laid down, in a plain and eaſy Method, thoſe Things which ſeem clear and uncontroverted in our Law-Books, and which are chiefly neceſſary for an Arbitrator to have his Eye upon, who would *effectually* determine the Matters in Controverſy ſubmitted to his Judgment; and this I have done under theſe five Things, which are incident to every Award or Arbitrament, *viz. Matters of Submiſſion, the Submiſſion, Parties to the Submiſſion, the Arbitrators, the Making and Delivering of the Award.*

Sect. I. Matters of Submiſſion.

Sect. II. The Submiſſion.

Sect. III. Parties to the Submiſſion.

Sect. IV. The Arbitrators.

Sect. V. The Making and Delivering the Award.

SECT. I.

Matters of Submiſſion.

1. ALL Matters and Diſputes whatſoever (except criminal Offences, or concerning the Enforcing or Diſſolving a Marriage) may be ſubmitted to Arbitrament, obſerving the Manner the Law requires the Submiſſion ſhould be.

2. All Matters of Freehold, or any Right or Title to Lands or Tenements, cannot be ſubmitted to Arbitrament, either by Parol, by Rule of Court, or by Deed or Agreement in Writing; ſo that when there is any Difference concerning theſe Matters, it is neceſſary that the Parties ſhould be bound in mutual Obligations to ſtand to the Award. 1 Rol. Abr. 244. 4 Co. 1. a.

3. A Thing certain, as a Debt due by Bond or Record, an Annuity, *&c.* cannot regularly be ſubmitted but by Writing, and it is moſt adviſeable that the Parties enter into Bonds. 1 Rol. Abr. 264. Cro. Jac. 647.

4. Criminal Matters, as Treaſons, Murders, Felonies, of all Kinds, cannot be ſubmitted to Arbitrament; for it is for the Good of the Commonwealth, that ſuch Offenders be made known and puniſhed. Weſt's Symb. Part 2. §. 33. 2 Vent. 109.

1 Rol. Abr. 252. 5. Matrimonial Cauſes, or any Thing concerning the Contract or Diſſolution of the Marriage, cannot be ſubmitted to Arbitrament.

22 H. 6. 39. 9 Co. 78. 6. But all Actions perſonal and incertain, as Treſpaſs, Conſpiracy, Maintenance, *&c.* may be ſubmitted without Writing: But as ſuch a Submiſſion is attended with manifeſt Inconveniency, both in Regard of the Difficulty in obliging the Party to perform the Award, and likewiſe that it may be * revoked at Pleaſure, without any Inconveniency, it is moſt prudent that a Submiſſion of thoſe, as well as all others, ſhould be by Bond.

SECT. II.

The Submiſſion.

1. THE *Submiſſion is the Power given the Arbitrators to pronounce Sentence between the Parties.* Of Submiſſions ſome are *general*, as of all Demands whatſoever; or *ſpecial*, as of ſome certain Matters in Controverſy; they may likewiſe be *abſolute*, or *conditional*; *abſolute*, as not reſtraining the Arbitrators from making an Award of the Whole, or of any Part of the Matters ſubmitted; *conditional*, by which they are tied down to make their Award according to the Words of the Submiſſion.

Weſts Symb. 2 Part, 163. 9 Rep. 78. 2. And then *note*, that if the Submiſſion be abſolute, and general, or of ſeveral Things, the Arbitrators may not only make an Award of Part of thoſe Things, but likewiſe, if they make a good Award as to Part, and a void Award as to another Part,

* *Ex nuda Submiſſione non oritur Actio.*

Part, the Award ſhall ſtand for ſo much as is good, unleſs it has a Relation to the void Part; for which Reaſon a general Submiſſion, with a Power to the Arbitrators to make their Award of the Whole, or any Part of the Matters in Controverſy, ſeems to be the beſt, and may prevent ſeveral Suits and Debates, which have ariſen on this Diſtinction.

3. Submiſſions are made by *Bond*, with a Condition to perform the Award; by Rule *of Court*, by *Word*; and they may be made by *Covenant* to ſtand to the Award; tho' this laſt Method is ſeldom uſed.

4. A Submiſſion by Bond, as it is the moſt frequent, ſo it is by far the beſt; the Penalty of the Bond ſhould be the Value of the Thing ſubmitted, ſo that the Party may rather abide by the Award, than forfeit his Obligation. Each Party muſt give the other a Bond, which Bond and Condition muſt contain exactly the ſame Words, only changing the Names of the Parties: It is likewiſe neceſſary to mention in the Submiſſion, the Time in which the Award is to be made, and when to be delivered, that ſo the Parties may take Notice of it at their Peril.

5. A Submiſſion by Rule of Court is made purſuant to the Statute 9 & 10 *W.* & *M.* it is made by the Parties ſignifying their Conſent in Writing, and getting a Counſel in any of the Courts, in which you would have it made a Rule, to move the Court for that Purpoſe; which is never denied, provided it be concerning a Thing, for which there is no other Remedy than by *Perſonal Action* or *Suit* in *Equity*; and then the Party is liable to the ſame Penalties that he would be for diſobeying any other Rule of Court. See the Chapter concerning Awards made by the Rule of Court, p.

6. Submiſſions by Parol are almoſt out of Uſe, and never practiſed but when the Controverſy is of ſome ſmall or inſignificant Matter, and very juſtly; for it is highly neceſſary for the Arbitrators to know their Power, and that the Parties know how far they are liable to their Sentence, and that each Party may reap the Fruit of the Thing awarded him, with Certainty and Expedition.

7. Submiſſions by *Covenant* are likewiſe ſeldom uſed, for tho' they contain the ſame Certainty with a Bond, yet the Method of ſuing on a Covenant is different, and more difficultand perplexed than in ſuing on a Bond.

SECT. III.

Parties to the Submiſſion.

1. REGULARLY all Perſons whatſoever may ſubmit to an Arbitrament, but they muſt do it willingly; for if they are compelled to do it by *Threats*, *Dures*, *&c.* the Award will be void; but *Infants*, *Feme Coverts*, and they who have *joint Power* with *others*, are excepted.

7 E. 4. 21.

2. It is held clearly in two or three Caſes, That the Submiſſion of an Infant ſhall not bind him; but it is likewiſe ſaid, That he may ſubmit to an Award, and, when he comes of Age, agree or not agree to it, as he pleaſes; but as a Court of Equity will not Decree an Award to bind an Infant, unleſs it be apparently for his Advantage, it is moſt expedient that he ſhould not be made a Party to the Submiſſion, unleſs it be by Order of Court.

13 H. 4. 12. March 111. 1 Jones 164. 1 Chan. Caſes 279.

3. A Feme Covert cannot of herſelf ſubmit to an Award, but in ſome Caſes it is proper and neceſſary

Cro. Jac. 447.

ceſſary that ſhe be joined with her Huſband; for the Awarding a Thing to be done by or to a Man's Wife, is as much void as if ſhe were a Stranger; but in moſt Caſes where the Huſband becomes intitled to any Right, or becomes any Way chargeable by the Intermarriage, it is ſufficient that he alone he made a Party. 1 Rol. Abr. 246.

4. They who have a joint Power with others cannot ſingly ſubmit in Relation to ſuch Power, without their Fellows; as a Dean without a Chapter, a Mayor without his Commonalty, the Maſter of a College or Hoſpital without his Fellows; and ſo of other Societies and Guilds. 21 E. 4. 13.

5. If there is a Controverſy between Two, who are jointly intereſted, and a third Perſon, and the Two thus jointly intereſted are not willing to enter into a joint Bond, by which they would be bound for each other; they may enter into ſeparate Bonds, and it will be good. Cro. Car. 433.

6. If Divers of the one Part ſubmit themſelves to the Award of certain Perſons, and divers of the other Part, the Arbitrators may by the Submiſſion have Power to make an Award of Matters between them jointly, and likewiſe of Matters between them ſeparately. 21 H. 7. 29. 1 Vern. 259.

7. One Man may ſubmit for another; but *note*, That if there are mutual Releaſes awarded, the Releaſe muſt be made to him on whoſe Behalf the Submiſſion was, and not to the Party who ſubmitted. Skin. 679.

SECT. IV.

The Arbitrators.

1. ARBITRATORS are private extraordinary Judges, choſen by the Parties to give Judgment between them to end the Debate; it is often ſaid, and almoſt eſtabliſhed as a Rule, that neither natural nor legal Diſabilities do hinder any one from being an Arbitrator; for if they are incompetent Judges, the Fault is in thoſe who chooſe them; but they muſt, notwithſtanding this, have ſome common Senſe as well as common Honeſty; for if they err in a Point of Law, or are miſtaken in a Matter of Fact, their Award will in many Caſes be ſet aſide, particularly in a Court of Equity; ſo likewiſe if they exceed their Authority, or are guilty of Partiality, Corruption, or Diſhoneſty.

2 Vern. 705.

2. A Party in Intereſt cannot be an Arbitrator; as where there was a Controverſy between *A.* and *B.* and *B.* conſented to refer the Matter to *A.* and it was held that his Award was void.

Hard. 44.

3. The Arbitrators are to give one intire and compleat Judgment on all the Matters ſubmitted to them; therefore it is not adviſeable for them to conſider Part of the Matter ſubmitted at one Time, and ſo give Judgment thereupon, and Part at another, and ſo give diſtinct Judgments; neither can they regularly reſerve any Power to themſelves, ſo as to ſettle any Point after the Time allowed them to make their Award is expired; but they may conſider one Part one Day, and another Part another Day, and on the laſt Day give a compleat Judgment.

1 Rol. Abr. 250.

4. The Arbitrators cannot aſſign their Power, for they have but a bare Authority.

5 Rep. 78.

They

They cannot injoin an Oath to the Witneſſes, there being no Law which gives them any ſuch Power. *Burn's Juſt.* 8*vo.* 116. Edit. 1766.

5. An *Umpirage* is where there is but *one* Arbitrator; and is uſually when the Parties ſubmit themſelves to the Arbitrament or Award of certain Perſons, and if they cannot agree, or are not ready to deliver their Award in Writing before ſuch a Time, then to the Judgment of another, as *Umpire.*

6. This is uſually the Effect of the Submiſſion, in which the *Umpire* is ſometimes named by the Parties themſelves, and at other Times the Arbitrators have Power to name him.

7. But herein obſerve, that if the Arbitrators are to chuſe the *Umpire*, they muſt be careful that they do not chuſe him before the Time allowed them to make their Award be expired, becauſe of the Inconveniency of having two concurrent Juriſdictions. 1 Salk. 70.

8. And as it is doubted whether they can, when they have once executed their Authority by chuſing an Umpire, revoke or chuſe again, though the Perſon elect refuſe to accept, it is the ſafeſt way to chuſe their Umpire upon Condition that he does accept the Umpirage, for then he is not *Umpire* unleſs he accept it. 2 Vent. 113. 1 Salk. 70.

9. The Arbitrators cannot make an Award of Part, and the Umpire of the Reſidue, unleſs it is ſo expreſly ordained by the Submiſſion. 1 Rol. Abr. 542.

10. Submiſſions to an Award may be countermanded, ſuch Authorities in their own Nature being revocable, through made irrevocable by expreſs Words. 8 Co. 82.

11. But *note*, that if the Submiſſion be by Bond, if it be revoked, the Bond is forfeited; ſuch Revocation muſt be by Deed, with Notice to the Arbitrators, though this will not ſave the Forfeiture of the Bond.

12. If

12. If the Submiſſion be by Rule of Court, if either of the Parties revoke it, the Court will grant an Attachment.

13. A Submiſſion by *Word* may be revoked without any Forfeiture, which is one of the Inconveniencies which attends this Kind of Submiſſion; but it muſt be with Notice to the Arbitrators, though ſuch Notice need not be in Writing, and it muſt be before the Award made.

Matters in Difference were, by Conſent of Parties, referred to three Arbitrators, ſo as they, or any two of them, make an Award, and an Award having been made by two in Plaintiff's Favour, Defendant moved to ſet it aſide, objecting, that two had not a Juriſdiction without the third; and obtained a Rule to ſhew Cauſe. Upon ſhewing Cauſe it appeared, that the third Arbitrator had ſufficient Notice of the Meetings of the other two, and might have been preſent if he would. *Per Cur'*: 'Tis agreed by both ſides, that if the third had met, two might have made an Award; two have a Juriſdiction, but muſt meet purſuant to Rules of Law. If the third had been preſent, his Reaſons might have altered the Opinion of the other two; he is not therefore to be excluded by Fraud; nor are the two to act, without the third's having an Opportunity to be preſent; but where the third has ſufficient Notice, as in this Caſe, and will not attend, the Meeting of the two is regular, and their Authority ſufficient. The Rule diſcharged. 2 *Barnes* 53.

SECT.

SECT. V.

The making and delivering the Award.

1. ARBITRAMENT is the Sentence or Decree pronounced by the Arbitrators, and publiſhed when they have heard all Parties; but now as all Submiſſions are uſually by Bond conditionally, *ſo as the Award be made in Writing, and ready to be delivered to the Parties, or to ſuch of them as ſhall require the ſame*; the Parties ſo bound themſelves are obliged to take Notice of the Award at their Peril, unleſs the Words of Submiſſion are, *ſo that the Award be delivered to each Party by ſuch a Day*; for then it muſt be delivered to each Party accordingly. 5 Co. 78.

2. But though the Words of the Submiſſion may be ſuch, as will oblige the Parties to take Notice of the Award at their Peril; yet if the Arbitrators award that one of the Parties ſhall do an Act, which depends upon another firſt to be done of the other Party, he muſt have Notice of it; at leaſt the Party, who would take Advantage of it, muſt ſhew that he has done what was neceſſary on his Side.

3. I ſhall only in this Place conſider theſe four Things following, which are chiefly neceſſary and eſſential to every good Award. 1. That the Award be made with Reſpect to Perſons and Things, according to the Submiſſion. 2. That it be beneficial, and appoint ſomething advantageous to each Party. 3. That it be poſſible and lawful. 4. That it be certain and final.

4. And if theſe Things are obſerved, the Award ſhall be expounded according to the Intent of the Arbitrators, and not literally, and ſhall not be unravel'd in a Court of Equity, unleſs there was Corruption in the Arbitrators, *&c.* 10 Co. 57. 1 Chan. Caſes 279.

5. 1ſt,

5. 1ſt, That the Award, with reſpect to Perſons and Things, be made according to the Submiſſion; for in many Caſes, to award a Thing to be done by, or to a Stranger, is void.

10 Co. 131. 6. As to award that a Stranger ſhall enter into an Obligation, or to award that one of the Parties and a Stranger ſhall pay 10 *l.* this Award as to the Stranger is void, though it is good as to the Party himſelf.

1 Rol. Abr. 244.

1 Rol. Abr. 248. 7. An Award that the Wife and Heir apparent (when they are not Parties to the Submiſſion) ſhall make an Aſſurance of Lands, is void.

8. But it is a good Award, that the Party levy a Fine in the Court of Common Pleas, though there the Act of the Court is neceſſary; ſo likewiſe if the Party has any Remedy, either in Law or Equity, to compel the Stranger to perform the Thing awarded, it ſhall be good.

9. As if two are jointly bound in an Obligation, and one of them is awarded to pay the whole Money, and diſcharge the Bond, though there is an Act to be done by a Stranger, *viz.* the Delivering up the Bond, yet as he has a Remedy in Equity to compel him to it, the Award is good.

10. Sometimes to do a Thing to a Stranger is void, as to award that one of the Parties ſhall make an Eſtate for Life to the other, Remainder in Fee to a Stranger, it is void as to the Stranger.

Cro. Eliz. 758.

1 Salk. 74. 11. But if it appear that the Party is to receive any Advantage by the Act that is to be done to the Stranger, it may be otherwiſe; as an Award that one of the Parties ſhall pay Money to the other Party's Servant, this is good.

1 Rol. Abr. 247.

12. So where the Stranger is uſed as an Inſtrument only, or is to do a miniſterial Thing, it may be good; as an Award that one of the Parties ſhall make a Feoffment to *J. S.* who is a Stranger,

to

to the Uſe of the other Party, or that they ſhall give mutual and effectual Releaſes, and ſuch as Counſel ſhall approve.

13. It is reſolved that the Arbitrators may Award that one of the Parties beg the other's Pardon before ſuch a Mayor, or ſuch and ſuch Perſons: But if the Award be, that *A.* ſhall beg *B.*'s Pardon in ſuch Manner, and in ſuch Place, as *B.* ſhall appoint, it is not good; for though the Time and Place be but Circumſtances, yet in this Sort of Satisfaction they make the moſt conſiderable Part. 1 Salk. 71.

14. As the Arbitrators are, with reſpect to the Things ſubmitted, circumſcribed and tied down to the Submiſſion itſelf, ſo in ſeveral Caſes it has been diſputed, whether their Awarding Releaſes to the Time of the Award, and not to the Time of the Submiſſion, was good; it is therefore moſt adviſable to award Releaſes to the Time of the Submiſſion, though it is now clearly held, that general Releaſes ſhall extend only to the Time of the Submiſſion, and that, if there be Releaſes awarded to the Time of the Award, they ſhall be good, unleſs it be ſhewn on the other Side that ſome new Matter had ariſen between the Parties, between the Submiſſion and Award. 1 Rol. Abr. 242. 6 Mod. 34.

15. If the Condition of the Submiſſion be to ſtand to the Award of *J. S.* ſo that the Award be made, ſigned and delivered by the Arbitrators as their Deed, at or before ſuch a Day, and the Arbitrators make an Award, which they Seal and Deliver, but omit to Sign, this Award will not be good. 1 Rol. Abr. 245.

16. And it is held to be neceſſary (if the Condition be as above) for the Arbitrators, if they cannot write, to ſet their Marks to the Award. Palm. 121.

17. 2dly,

1 Rol. Abr. 252. 17. 2dly, That it be Beneficial, and appoint ſomething advantageous to either Party; for an Award of one Side only, is not good; ſo if an Award be, that one of the Parties ſhall go to *Rome*, when it appears that there is no Advantage to the other Party by his going, it is void.

3 Mod. 272. 18. If *A.* and *B.* ſubmit to the Award of *J. S.* who makes an Award, that *A.* ſhall be bound with ſuch Sureties as *B.* ſhall approve, for the Payment of 100 *l.* to *B.* and that thereupon they ſeal mutual Releaſes to one another, this is a void Award; becauſe *B.* muſt firſt approve of the Security before, and without which the Releaſes are not to be given; ſo that it is but an Award of one Side, becauſe it is ſubject to be defeated at the Pleaſure of *B.*

Style 44. 19. If an Award be made between *A.* and *B.* that *A.* ſhall pay to *B.* 10 *l.* and that *B.* ſhall pay for the making the Writings of the Award, this is a void Award, there being nothing awarded *B.* to do, but the making the Writings.

1 Rol. Abr. 248. 20. 3dly, The Award muſt be of a Thing poſſible and lawful to be performed; for if the Arbitrators award that one ſhall go to *Rome* in an Hour, ſhall pay Money at a Day paſt, the Condition of the Obligation is ſaved: So if they award a Thing againſt Law, as to kill *J. S.* or that an Infant ſhall 1 Jones 164. make a Releaſe, which he cannot do by Law, *&c.*

2 Mod. 27. 21. Nay, it is ſaid, that in ſome Caſes, when the Thing to be performed becomes impoſſible, though after the Award made, it ſhall excuſe the Party.

4thly, The Award ought to be certain and final, ſo that it may make an end of the Controverſy.

22. And

22. And if the Arbitrators award a Thing to be done, it is proper for them to appoint a Time and Place for the doing of it; as ſuch a Day and Hour, at ſuch a Tavern or Coffee-houſe; and the Party, who would take Advantage of it, muſt ſhew that he has done what was requiſite on his Part; but if a Thing is to be done generally, without mentioning Time or Place, it ſhall be done immediately. 2 Brownl. 311.

23. An Award that one ſhall pay ſo much as ſuch Lands are worth, is not good. Skin. 248.

24. So an Award that one ſhall pay to the other as much as is due in Conſcience, is not good. Style 28.

25. But in ſome Caſes, though the Thing be not certain in it ſelf, yet if it be ſuch a Thing as may be reduced to a Certainty, it may be good; as an Award that one of the Parties ſhall pay ſuch Coſts of a Suit as a Maſter ſhall Tax, is good. 1 Salk 75.

26. If there be a Submiſſion of all Controverſies touching a Voyage to Sea, and an Obligation with Condition for Performance thereof, and an Award is made that one ſhall pay his Part of the Charge of the Voyage, and ſhall allow his proportionable Part of the Loſs that ſhall come to the Ship by the Voyage, upon Account, though this Award be of it ſelf uncertain, yet in as much as it may be reduced to a Certainty, it is good. Cro. Car. 383.

CHAP.

CHAP. II.

Matters in Controverſy which may, or may not, be ſubmitted to Arbitrament.

1. AS all Matters of Controverſy are generally at this Time ſubmitted to Arbitrament, by the Parties entring into mutual Obligations to perform the Award, it may not be thought neceſſary to enter too minutelly into a Diſquiſition of the ſeveral Matters, concerning which the Arbitrators can make no Award that will bind the Parties, unleſs they enter into Bonds of Submiſſion, or conſent to have their Submiſſion made a Rule of Court, purſuant to the * Statute of 9 & 10 *Will.* and *Mary.*

* Vide *the Statute*, Cap. VIII.

2. Notwithſtanding this I ſay is the general Practice, yet as an Award made of ſeveral Things at this Day may be good, though ſubmitted to by *Parol*, or without Writing; and as the *Statute* only enacts, *That all Submiſſions made a* Rule *of* Court, *ſhall be of ſuch Matters for which there is no other Remedy but by Perſonal Action or Suit in Equity*, &c. I ſhall ſhew what Diſtinctions the Law has has made concerning theſe Matters with reſpect to Things Real, at Lands and Tenements; Things Perſonal, as Debts due by Bills, Bonds or Records, *&c.*

3. But *Note*, That regularly all Matters whatſoever, to which the Parties have by Bond ſubmitted, (except Criminal Offences and Matrimonial Cauſes) they are obliged to perform the Award made

made relating to them, otherwiſe they are liable to be ſued on their Bonds; provided the Award be made in ſuch Manner as the Law requires.

Sect. I. Matters in Controverſy, which may be ſubmitted to Arbitrament, either by Word or by Writing.

Sect. II. Matters in Controverſy, which cannot be ſubmitted otherwiſe than by Writing.

Sect. III. Concerning Matters of Freehold, which cannot regularly be ſubmitted but by Bond.

Sect. IV. Concerning Things certain, as Debts due by Contract, Bond, or Record.

Sect. V. Concerning Criminal Offences, which cannot be ſubmitted.

Sect. VI. Concerning Marriage, or any Contract relating thereunto, which cannot be ſubmitted.

Sect. VII. Things not in Being at the Time of the Submiſſion, tho' they happen before the Award be made.

SECT. I.

Matters of Controverſy, which may be ſubmitted to Arbitrament, either by Word or by Writing.

1. IT is held clearly, that all Actions Perſonal and uncertain, ſuch as Treſpaſs, Conſpiracy, and Maintenance, are proper Matters for Submiſſion, and that an Award made concerning them will be good, though neither the Submiſſion nor the Award be in Writing. 22 *H.* 6. 39. 9 *Co. Peytoe's* Caſe, 78.

2. It is held likewiſe, that if upon ſuch Parol Submiſſion the Arbitrators award the Party a Sum certain, he may bring an Action of Debt for it; but if they award the doing of ſome other Thing, which is Beneficial to him, he muſt bring his Action on the Caſe. 1 *Keb.* 600.

3. In an Appeal of Mayhem, an Attaint, in Waſte, againſt Tenant for Life or Years in the *Tenuit*, the Arbitrators may make an Award. 6 *Co.* 44. 1 *Rol. Abr.* 266.

4. They may make an Award in Mayhem, though the Writ be *Felonice*, and in Attaint, becauſe the Attaint is not founded barely on the Record, but alſo on the ſuppoſed falſe Oath, which is Matter of Fact, 13 *E.* 4. 1. But whether they can make an Award in Waſte againſt Tenant for Life or Years, in the *Tenet*, becauſe it favours of the Realty. *Quære*, & *Vide* 9 *Co.* 78. a. *Cro. Jac.* 100.

5. Arbitrators may make an Award of the Arrears of Rent, reſerved on a Leaſe for Years. 4 *H.* 6. 17. *b.* 1 *Rol. Abr.* 264.

6. An

6. An Action of Account may be ſubmitted to Arbitrament, for it is a Thing uncertain; but the Arrearages of an Account found before Auditors, cannot be ſubmitted. 4 *H.* 6. 17.

7. In an Action of Debt for 20 *l.* Rent Arrear, upon a Leaſe for Years, an Award of 10 *l.* for this Debt and other Treſpaſſes, is a good Bar of the Action, though it is a leſs Sum than the Debt demanded, and tho' the Action is for a Debt certain; in as much as other Things are ſubmitted with this, and ſo all together are uncertain, and it may be the Sum of 20 *l.* was abridged to 10 *l.* in reſpect of a Treſpaſs done by the Plaintiff to the Defendant. 10 *H.* 7. 4. *All.* 52.

8. If there be a Submiſſion of all Debts, the Arbitrators may award a Releaſe of all Bonds, Judgments, Executions and Extents; for, as by the Submiſſion the Arbitrators have Power to make an Award concerning the Debts themſelves, ſo by Conſequence they have Power to award a Releaſe of the Specialties, Judgments, *&c.* by which the ſaid Debts are due. Adjudged *Trin.* 22 *Car.* 2. between *Roberts* and *Marriot*, 2 *Saund.* 190.

9. In Debt upon a Bond by three Executors, the Defendant pleaded that there were ſeveral Controverſies between the Defendant and one of the Plaintiffs; upon which they ſubmitted to the Award, *&c.* who awarded that the Defendant ſhould be quit of the Bond; and it was held by the Court, that a Bond of it ſelf, becauſe a Debt certain, cannot be ſubmitted; otherwiſe, if it were ſubmitted among other *Things*; and by two Judges the Plea is good, though the Controverſy were between the Defendant and one of the Plaintiffs only. *Moreton* doubted. *Trin.* 22 *Car.* 2. between *Morris* and *Creech*, 1 *Lev.* 292.

Note, That though in the above Caſes, a Submiſſion by Parol was good, and the Party, in whoſe Favour the Award was made, had a Remedy to inforce a Performance of it; yet it was never expedient that any Submiſſion ſhould be by *Parol*, becauſe the Party could have revoked it at Pleaſure, at any Time before the Award made, and that by Parol likewiſe; but it is much leſs ſo now, becauſe the Judges will rarely enforce the Performance of an Award, when either the Submiſſion or the Award is by *Parol*, becauſe it lays ſo great a Foundation for Perjury.

SECT. II.

Matters in Controverſy, which cannot be ſubmitted otherwiſe than by Writing.

1. ALL Matters of Freehold, or any Right and Title to a Freehold, cannot be ſubmitted to Arbitrament, though the Submiſſion be in Writing, and by Deed, or by Deed Indented; and the Reaſon is, That being of ſo high a Nature, no collateral Satisfaction will be a Bar to a real Action, and it requiring ſuch Solemnity, as that it is not transferable from one to another, without Livery and Seiſin. 1 *Rol. Abr.* 244. 4 *Co.* 1. a.

2. Yet if there be a Submiſſion concerning the Right, Title, or Poſſeſſion of Lands or Tenements, and the Parties enter into mutual Bonds, to ſtand to the Award made relating to them, they forfeit their Bonds unleſs they obey it.

3. Things certain, as a Sum of Money, Debts due by Deed or Record, cannot be ſubmitted otherwiſe

wiſe than by Writing; and the Parties muſt, as in the above Caſe of Freeholds, enter into Bonds of Submiſſion, unleſs they elect to have their Submiſſion made a Rule of one of his Majeſty's Courts of *Weſtminſter*; which in this latter Caſe will regularly be good to bind them, though not ſo in the former, by the expreſs Words of the Act of Parliament.

SECT. III.

Concerning Matters of Freehold, which cannot regularly be ſubmitted otherwiſe than by Bond.

1. IT is expreſly reſolved, that Arbitrators cannot make an Award of a Freehold, ſo as to adjudge the Land of one to another. 14 *H.* 6. *Keil.* 99.

2. A Partition cannot be made by Award, for a Freehold cannot Paſs without Livery and Seiſin. Adjudged between *Horton* and *Horton*, 1 *Rol. Abr.* 242.

3. An Arbitrator cannot make an Award of a Leaſe for Years of Land, ſo as to adjudge the Land of one to another, by which the Intereſt and Eſtate of one ſhall be transferred to the other, becauſe this is a Chattel real. 1 *Rol. Abr.* 242, 146.

4. My Lord Chief Juſtice *Roll* ſays, That this ſeems to be admitted by *Peytoe*'s Caſe; and founds his Reaſon on the Authority of that Caſe, *viz.* That an Award is no good Plea in an *Ejectione Firmæ*. But the Reſolution is quite contrary; for the Queſtion there being, Whether Accord with Satisfaction was a good Plea in an *Ejectione Firmæ*? It was reſolved, That this Action being not only 9 Co. 78.

to recover the Term, but likewiſe Damages, it was a good Plea: It being therefore a certain Rule, that an Award may be pleaded where Accord with Satisfaction may; *Quære* whether it is not rather an Authority that ſuch Submiſſion may be good.

5. In Actions mixed, in which the Land (of an Eſtate of Freehold, as it ſeems) ſhall be recovered, an Award is no Plea; therefore ſuch mixed Actions cannot properly be ſubmitted. 1 *H.* 6. 37.

6. The Detaining a Charter of Feoffment, as it relates to a real Thing, cannot be ſubmitted. 9 *H.* 6. 60. But an Action of Treſpaſs for taking the Charter may be ſubmitted, for Damages only can be recovered for ſuch Taking. *Ibidem.*

SECT. IV.

Concerning Things certain, as Debts due by Bill, Bond or Record.

1. IT appears by all our Books, that neither Arbitrament, nor Accord with Satisfaction, are good Pleas in Bar, when the Action is grounded on a Deed. 1 *H.* 7. 16. *b. Dyer* 51.

2. For when a Duty accrues by the Deed in Certainty *Tempore confectionis Scripti*, as by Covenant, Bill, or Bond to pay a Sum of Money, there this certain Duty takes its Eſſence and Operation originally and ſolely by the Writing; and therefore it ought to be avoided by Matter of as high a Nature, although the Duty be merely in the Perſonalty. *Nihil tam conveniens eſt naturali Æquitati quam unumquodque Diſſolvi eo Ligamine quo Ligatum eſt.* 6 *Co. Blake's* Caſe, 43, 44.

3. But

3. But when no certain Duty accrues by the Deed; but a Wrong or Default ſubſequent, together with the Deed, gives an Action to recover Damages, which are only in the Perſonalty, for ſuch Wrong or Default an Award is a good Plea. And *Note*, That the principal Point in *Blake*'s Caſe was an Action of Covenant for not repairing a Houſe, and it was there held, That this being a ſubſequent Default an Award is a good Plea. 6 *Co.* 43. *Cro. Jac.* 99. S. C.

4. In an Obligation upon Condition to pay a certain Sum, in which the Duty commences originally, and only by the Deed, and likewiſe in an Action of Covenant for Non-payment of a certain Sum of Money which he covenanted to pay; an Award, or Accord with Satisfaction, is no good Plea. 6 *Co.* 43. Vide *the Statute* 3 *and* 4 Ann. *Ch.* 16.

5. If *A.* is indebted to *B.* in 20 *l.* by ſingle Bill, and they ſubmit all Matters between them to the Award of *J. S.* who awards that *A.* ſhall pay a certain Sum, *ſcilicet* a leſſer Sum to *B.* in Satisfaction of the ſaid Bill, though if he pays the Money according to the Award, yet this cannot be any Bar in an Action brought on the ſaid Bill, becauſe the Action is grounded on a Deed; yet if each of them was bound to perform the Award, he ought to pay the Money, otherwiſe he forfeits his Obligation. Between *Lumly* and *Hutton*, adjudged upon Demurrer, 15 *Jac.* 1. *Cro. Jac.* 447.

6. If two ſubmit a certain Debt in Controverſy between them, the Arbitrators cannot make any Award thereof, becauſe it was certain before the Submiſſion. 1 *Rol. Abr.* 264.

7. But if one claims 5 *l.* expended for the other *pro diverſis negotiis*, an Award made thereof will be good, for though a Debt upon a Bill or Con-

tract cannot of it ſelf be put in Arbitrament, yet this may, being claimed as Expences laid out for ſeveral Neceſſaries. *Cro. Eliz.* 422.

8. Debt upon a Bond for Performance of an Award, in which the Arbitrators had taken Notice of 72 *l.* in Controverſy, and had awarded 50 *l.* in Satisfaction; the Defendant pleads *Nullum fecerunt Arbitrium*; the Plaintiff replies an Award, and ſets it forth, and aſſigns a Breach, to which the Defendant demurred, becauſe it appeared by the Award, that 72 *l.* was in Controverſy for Rent due, and that 50 *l.* was awarded in full Satisfaction of 72 *l.* and general Releaſes to be given; but it did not appear that any other Matters were in Controverſy between the Parties, though the Submiſſion was general; and it was inſiſted upon, that though the Arbitrators could reduce Things incertain to a Certainty, yet they could not make a Debt certain to be leſs. But the whole Court were of Opinion that the Award was good, for that the Arbitrators may conſider other Matters between the Parties; neither did it appear by the Award that the 72 *l.* was due, but in Demand only, and 'tis unreaſonable for him to find fault with his own Caſe; for he alledges, that he ought to pay 72 *l.* and complains that the other Party is contented with 50 *l.* and demands no more. Between *Godfrey* and *Godfrey*, 2 *Mod.* 303, 304.

9. Debt upon an Obligation for eighty Pounds, conditioned for the Performance of divers Covenants, contained in Articles of Agreement; the Defendant pleaded, That it was agreed between the Plaintiff and Defendant, that he ſhould grant an Annuity of 5 *l.* out of ſuch Land for Life, in Diſcharge of the Bond; and it was held without Argument, that this Concord and Verbal Agreement could never diſcharge a Specialty. Between *Bull* and *Wheeler*, *Cro. Jac.* 647.

10. In

10. In an Annuity for an Annuity in Fee or for Life, an Award is no Plea. This, ſays my Lord *Roll*, muſt be intended of an Annuity by Preſcription; for if it be by Deed, it is no good Plea againſt the Deed. 1 *Rol. Abr.* 266.

11. Matters grounded upon a Record or Statute cannot be ſubmitted. 6 *H.* 4. 6. *a.*

12. In an Action of Debt for the Arrears of an Account before Auditors aſſigned of Record, an Award is no Plea. 1 *Rol. Abr.* 265.

13. But in an Action upon the Statute of Labourers, an Award is a good Plea in Bar; for the Action is not merely founded on the Statute, but partly on a Matter in *Pais*, *ſcilicet* his Departure. 1 *Rol. Abr.* 265.

SECT. V.

Concerning criminal Offences which cannot be ſubmitted.

1. MATTERS Criminal, ſuch as Treaſons, Murders, Felonies of all Kind, cannot be ſubmitted to Arbitrament; for it is for the Good of the Commonwealth, that ſuch Offenders be made known and puniſhed. *Weſt. Symb. Part* 2. *Sect.* 33.

2. And tho' the Submiſſion be by Bond, yet the Award made relating to them will be void, and conſequently the Bond of Submiſſion likewiſe; and *quære* if it is not puniſhable to enter into ſuch Bonds, *& vide* 2 *Vent.* 109.

3. Perjury, Forgery, Aſſaults and Battery, or any other Offence indictable at the Suit of the King, come within this Rule, and cannot be ſubmitted to Arbitrament: But if the Party injured proceeds

proceeds by Way of Action, as he may in Aſſaults and Batteries, Libels, *&c.* the Damages he ſuſtained, or he expects to recover, may be ſubmitted to Arbitration.

SECT. VI.

Matrimony, or any Contract relating thereunto, which cannot be ſubmitted.

1. CAUSES matrimonial cannot be ſubmitted to Arbitrament, *Weſt Symb. Part* 2. *Sect.* 33. for as the Law diſcountenances and abhors all Reſtraints on Marriage on the one Hand, ſo on the other it makes void all Contracts not freely and without Compulſion entered into; and will make void any Bond, compelling one Perſon to marry another, when it is ſo agreeable to the Laws of Reaſon and the Laws of God, that Marriage ſhould proceed from a free Choice.

2. If a Man and a Woman ſubmit themſelves to an Award, it is no good Award that they ſhall intermarry, for this is not intended any Advantage. 1 *Rol. Abr.* 252.

3. But the Damages a Perſon ſuſtained by a Promiſe of Marriage, or any Thing relating to a Marriage Portion, may be ſubmitted. 16 *E.* 4. 2.

SECT.

SECT. VII.

Things not in Being, altho' they happen before the Award be made, cannot be ſubmitted.

1. IF the Submiſſion be of Ewes with Lamb, which after the Submiſſion, but before the Award made, happen to have Lambs; the Arbitrators have no Power to make an Award thouching the Lambs. *Weſt. Symb. Part* 2. *Sect.* 33.

2. If the Submiſſion be of a Term for Years of Land, and all thereupon depending; and the Award is, that one ſhall pay to the other 10 *l.* for the Rent that ſhall become due upon this Term at *Michaelmas* next enſuing; in as much as the Rent may be extinct by Surrender, Eviction, *&c.* before *Michaelmas*, the Award made thereof is void. Between *Gray* and *Wicker*, adjudged. 1 *Rol. Abr.* 245.

3. Whether Intereſt accruing after the Submiſſion, may be awarded for Money due before, *quære*, and ſee *Winch* 114, 120.

4. If there be a Controverſy between the Parſon and Pariſhioners, whether Tithes ſhould be paid in *Specie*, and they reciting the ſaid Controverſy, ſubmit themſelves to the Award of *J. S.* for all Matters, as well Spiritual as Temporal, from the Beginning of the World to the preſent Day; and the Arbitrator awards, that the Parſon ſhall have 7 *l.* for the Tithes due before the Submiſſion, and that the Pariſhioners ſhall pay 4 *l. per Ann.* for the Tithes which ſhall grow due after, this is a good Award for the Tithes which ſhall grow due after

after the Award; for the Right of the Tithes was in Queſtion, and not the Poſſeſſion. Between *Beckingham* and *Hunter*, 42 *Eliz.* 1 *Rol. Abr.* 246.

5. If the Condition of an Obligation be to ſtand to the Award of *J. S.* and he awards that one ſhall enjoy a certain Houſe, paying to the other 20*s.* yearly, if the Rent is not paid, the Condition is broke, for this is a good Award. Between *Parſons* and *Frowd*, *Cro. Eliz.* 211.

6. If an Award be, that *A.* ſhall make a Leaſe to *B.* and that for this Leaſe *B.* ſhall pay to *A.* a certain Sum yearly, this is a good Award. *Moor* 3. *Pl.* 8.

7. If Two ſubmit to the Award of *J. S.* of all Matters between them till the Submiſſion, and then each of them promiſes the other to perform the Award, and *J. S.* afterwards awards; whereas one was bound in an Obligation to the other (which was made after the Submiſſion, but before the Award) that the Obligee ſhould deliver up the Obligation to the other, in full Satisfaction of all Matters between them; and awards farther, that all was good, if this Obligation was good; though this Obligation is out of the Submiſſion, becauſe it was made after the Submiſſion, yet he is bound to perform it, becauſe it is to be given in Satisfaction of Things contained within the Submiſſion; as a Horſe or Money may be given in Satisfaction, tho' they are not within the Submiſſion. Between *Nicklas* and *Thomas*, *Trin.* 15 *Jac.* 1. 1 *Rol. Abr.* 243. (But the Reporter makes a *Quære* of it.) For this is a Thing in Action between them, and out of the Submiſſion.

CHAP.

CHAP. III.

The Submiſſion.

THE *Submiſſion* is a Power given the Arbitrators, by the Parties between whom any Controverſy ſubſiſts, to decide and determine their Differences and Diſputes, and to pronounce Sentence between them, according to Reaſon and good Conſcience, though in a private and extrajudicial Manner. And this their Sentence the Law obliges the Parties to obey, provided it be made in ſuch Manner as the Law requires.

As there have been various Reſolutions concerning the Making and Validity of the *Submiſſion*, and as the Conſtruction thereof has occaſioned ſome Contention; and as there are divers Kinds of Submiſſions, it will be neceſſary in this Chapter to ſhew,

Sect. I. Concerning the Making the Submiſſion.

Sect. II. Concerning the Conſtruction which has been made of the Submiſſion.

Sect. III. Concerning thoſe Matters which may be ſaid to be ſubmitted.

Sect. IV. Concerning thoſe Submiſſions which may be ſaid to be General or Special, Abſolute or Conditional.

Sect. V.

Sect. V. Concerning Submiſſions by Bond, Covenant, Rule of Court, by Parol, or without Writing.

SECT. I.

Concerning the Making the Submiſſion.

1. SUbmiſſions in former Days were moſt frequently made by People's Conſenting by Word, or verbal Declaration, to ſtand to the Award of ſuch and ſuch Perſons; and ſuch Submiſſions in thoſe Days were thought moſt * convenient, becauſe they did not run the Parties into any Hazard of a Forfeiture; and as they were revocable at Pleaſure, without any Inconveniency, ſometimes they ſubmitted by Deed Poll or indented, with Covenants to perform the Award.

*Weſt. Symb. Part 2. Sect. 38.

2. But now the Method is quite otherwiſe, and there are rarely any Awards made, but upon Submiſſions entered into by Conſent in Writing, which Conſent has been made a Rule of Court, or by Bonds, conditionally to perform the Award.

3. And theſe two laſt, as they are moſtly uſed, ſo undoubtedly they by far excel the others; the one giving the Party, who was to gain any Thing by the Award, a more ſure and expeditious Remedy for the Recovery of it; and the other not only aſcertaining the Matters ſubmitted, but likewiſe giving the Party a Power to ſue on the Bond.

4. Sometimes the Submiſſion is both by Bond and by Rule of Court; and this is ſtill the beſt Way;

Way; for it is ſaid that you may proceed on the Bond, and likewiſe have an Attachment for Non-performance of the Award. *Vide* 1 *Salk.* 73.

5. Undoubtedly a Submiſſion by Bond, in ſome Reſpects, exceeds a Submiſſion by Rule of Court; for an Award made purſuant to Bonds of Submiſſion, may bind the Parties Executors; but if the Party, who refuſes to perform an Award made purſuant to a Rule of Court, dies, the Act of Parliament directing that the Proſecution ſhould be carried on by *Attachment*, the Remedy being loſt, the Award is loſt likewiſe.

6. Each of the Parties ſubmitting by Bond muſt perfect one to the other, which Bonds muſt contain exactly the ſame Words, only changing the Names of the Perſons; and as it is uſual, ſo it is highly convenient, to mention in the Condition, *That the Award be in Writing, to be made at or before ſuch a Time, ready to be delivered to the Parties, or to ſuch of them as ſhall require it*, &c. See afterwards *Chap.* 6. *Sect.* 3.

7. In an Action upon the Caſe, on a Promiſe to perform an Award on a Submiſſion to *A.* and *B.* *when their Occaſion will permit*; *Kelynge*, *Twiſden* and *Moreton* held, that only a convenient Time was to be given at leaſt after Requeſt; but *Windham* held, that they had Time during their Lives, and that it was the ſame Thing, as if it had been to be made at their Wills and Pleaſure; but they all agreed, that if it was to be made generally, without any Time limited, the Law implieth it muſt be done in convenient Time; and that tho' the Submiſſion be when their Conveniencies permit, yet after Requeſt, or convenient Notice, the Party may revoke on the Neglect of the Arbitrators. 2 *Keb. p.* 10. 1 *Sid.* 281. *S. C.*

Note; As there may be ſeveral Parties to the Submiſſion, ſo their ſeveral and diſtinct Bonds will be good, as in the following Caſe.

8. If there be a Controverſy concerning certain Lands between *A. B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, ſubmit to the Award of *J. S.* and thereupon *A.* binds himſelf in an Obligation of 1000 *l.* to *B.* and *C.* with Condition to perform the ſaid Award of *J. S.* touching this; and *B.* and *C.* becauſe they would not be bound the one for the other, enter into ſeveral Obligations of 1000 *l.* a-piece to *A.* with ſeveral Conditions for the Performance of the Award of the ſaid *J. S.* and the Arbitrator awards that *A.* ſhall make a Releaſe of all his Right in the Land to *B.* and *C.* and in Conſideration thereof *B.* and *C.* ſhould pay 300 *l.* to *A.* in an Action of Debt by *A.* againſt *B.* upon his Obligation for the Non-performance of the Award; this is a good Award, and Breach aſſigned, that *nec* B. *nec* C. paid the 300 *l.* at the Time appointed, according to the Award; all this Matter being diſcloſed in Pleading; for, upon all the Matter ſhewn, it appears that *C.* is no Stranger to the Award, for he and *B.* ſubmitted themſelves jointly; and tho' they entered into ſeveral Obligations, yet this did not make *C.* any Stranger to the Award. Between *Haies* and *Haies*, adjudged upon a Demurrer, *Cro. Car.* 433.

SECT.

SECT. II.

Concerning the Conſtruction which has been made of the Submiſſion.

1. AS the Condition of the Bond of Submiſſion uſually recites the Matters in Difference in the moſt general and ſtrong Terms, as *all Matters, Suits, Debts, Duties, Actions and Demands whatſoever*, there are not many Caſes to be found in our Books, relating to this Part of the Submiſſion, or concerning the Force and Signification of theſe Words: Theſe that follow are the moſt conſiderable, and all that I think can be met with pertinent to this Section.

2. If the Submiſſion be of all Actions only, the Arbitrators cannot make an Award of ſuch Things of which the Parties have Cauſe of Action. 1 *Inſt.* 285.

3. By the Submiſſion of all Demands, all Matters concerning the Title of Land is ſubmitted. *Kelw.* 99.

4. If the Submiſſion be of all Actions and Quarrels, the Arbitrators cannot make an Award of Lands or Tenements. 36 *H.* 6. 11. *b.* Upon a Submiſſion of all Differences, whether the Arbitrators may award a Releaſe of all Demands, *vide Stil.* 170. Upon a Submiſſion of all Injuries, *vide Bulſt.* 311.

5. If a Submiſſion be of all Actions Perſonal, *Sectis & Querelis*, the Arbitrator cannot make an Award of any Suit, Action or Quarrel which is Real, but only of ſuch as are Perſonal; for the Word Perſonal refers to all which comes after in the Copulative; but if the Submiſſion had been

of all Actions Perſonal *ac Sectis & Querelis*, the Arbitrator might have made an award of Things Real, for the Word *Ac* disjoins them. 9 *E.* 4. 43. *b.* 44. *a.*

6. If *A.* and *B.* ſubmit themſelves to the Award of *J. S.* touching a Suit depending between them in an *Ejectione firmæ*, *J. S.* upon this Submiſſion cannot make an Award of the Land for which the Action is brought: Adjudged in Arreſt of Judgment, in an Action upon the Caſe for Non-performance of this Award, after a Verdict for the Plaintiff. Between *Taylor* and *Waltam*, 1 *Rol. Abr.* 247.

7. But though there have not been many Caſes on the above-mentioned Part of the Submiſſion, yet there have been various as well as ſome contradictory Reſolutions on the Conſtruction of other Parts of the Submiſſion; ſome of which I ſhall mention here; the others will come more properly under the Chapter of Awards, in thoſe different Sections, which teach us for what Cauſe Awards have been held void.

8. If a Submiſſion be to the Award of certain Arbitrators, and if they cannot agree, or are not ready to deliver their Award in Writing before the 1ſt of *May*, then the Submiſſion is made to *J. S.* to be the Umpire, to be made before a certain Day after; if the Arbitrators do not treat of the Matter, ſo that there is no Diſagreement between them; yet if they do not make any Award before the Day, the Umpire may make an Award upon this Submiſſion; for the Words, *And if they cannot agree*, are not to be taken literally, but as if they had been, If they do not agree upon any Award. 1 *Rol. Abr.* 261.

9. If a Submiſſion be to ſtand to the Award of certain Arbitrators, and that if they diſagree, then

to

o the Umpirage of *J. S. ita quod* the Award or Umpirage are made before the 1ſt of *May*; in this Caſe the Umpire cannot make any Award till a Diſagreement made by the Arbitrators, and the Arbitrators have Time to make their Award at any Time before the ſaid Day; and ſo no Time limited for the Umpire, and his Power therefore merely void. Between *Barber* and *Giles*, 1 *Rol. Abr.* 261.

10. If the Condition of an Obligation be to ſubmit to the Award of *A.* and *B. ita quod*, *&c. ante* 1 *May*, and if they made none, to the Award of ſuch Umpire as they ſhould chuſe, to be made before the 1ſt of *June*, tho' the *Ita quod*, *&c.* be in the Clauſe referring to the Arbitrators, yet by Conſtruction it relates to, and as well reſtrains the Umpire as Arbitrators. Between *Beau* and *Newbury*, 1 *Lev.* 139.

11. If two Men ſubmit themſelves for all Matters, *&c.* to the Award of certain Arbitrators to be made before a certain Day; and that if they do not make any Award before the Day, that then they ſubmit to the Ordinance and Judgment of *J. S.* if the Arbitrators make an Award of Part of the Things ſubmitted, and of Part not, the Umpire cannot make any Award of this Part of which the Arbitrators have made no Award, becauſe he hath no Power given, but upon Condition the Arbitrators make no Award. 39 *H.* 6. 10.

12. But if the Submiſſion be, that if the Arbitrators make no Award of the Premiſſes, or of any Parcel thereof, that then the Umpire ſhall have Power to make an intire Award, or of Parcel which remains, as the Caſe is; in this Caſe the Arbitrators may make an Award of Parcel, and the Umpire of the Reſidue, becauſe this is expreſly ordained. 39 *H.* 6. 11.

13. If the Condition of an Obligation be, to ſtand to the Award of *A. B. C.* and *D. Ita quod* the ſaid Award before ſuch a Day be made in Writing by the ſaid *A. B. C.* and *D.* or any Two of them, under their Hands, *&c.* any Two of the Arbitrators without the reſt may make an Award; for tho' by the firſt Part they are bound to ſtand to the Award of thoſe Four, yet their Power is divided by the ſubſequent Words, and the *Ita quod*, *&c.* is but an Explanation of the Condition, and the Whole makes but one Sentence. Between *Sallows* and *Girling*, *Yelv.* 203. adjudged upon Demurrer.

14. If, upon a Submiſſion of all *Title* in a certain Leaſe, the Arbitrator awards that one of the Parties ſhall have the Land, this gives the Intereſt in the Term; but if the Award be, that one ſhall permit and ſuffer the other to enjoy the Term, this gives not the Intereſt in it. Between *Truſloe* and *Yewre*, *Cro. Eliz.* 228.

SECT. III.

Concerning thoſe Matters which may be ſaid to be ſubmitted.

1. AS it is by the Submiſſion, that the Arbitrators are armed to pronounce a Sentence between the contending Parties, it is neceſſary for them to examine particularly what their Authority is, and how far it extends, to ſquare themſelves by the Terms thereof, and to ſee carefully that their Award be conformable to the Submiſſion, with Reſpect to Perſons and Things; for to award a Thing to be done *by* a Stranger, and ſometimes *to* a Stranger, who is not Party to the Submiſſion; or to make an Award upon another Thing that is not ſubmitted, is void.

2. As

2. As it is the Neglect of this Rule which has cauſed more Strife and Debate with reſpect to Awards, (when the diſcontented Party had no Mind to perform what was to have been done on his Side) than any other; and as there are more curious and artful Diſtinctions on this Head than any other, it requires the niceſt and ſtricteſt Examination; but as I have endeavoured to ſet all the Caſes on this Subject in the cleareſt Light I could, in the Chapter of Awards, I ſhall mention but a few in this Place.

3. If the Condition of an Obligation be, to perform an Award between the Parties of ſuch and ſuch Things; if the Arbitrators award a Thing to be done merely out of the Submiſſion, he is not bound to perform it. 8 *H.* 6. 18.

4. But otherwiſe it is of a Thing depending on the Principle. 8 *H.* 6. 18.

5. As, if there be a Submiſſion of all Debts, the Arbitrators may award a Releaſe of all Bonds, Judgments, Executions and Extents; for as by the Submiſſion the Arbitrators have Power to make an Award concerning the Debts themſelves; ſo *ex conſequenti* they have Power to award a Releaſe of the Specialties, Judgments, *&c.* by which the ſaid Debts are due. *Trin.* 22 *Car.* between *Roberts* and *Marriot*, 2 *Saund.* 190. adjudged.

6. If Two ſubmit to the Award of *J. S.* of all Matters between them till the Submiſſion, and then each of them Promiſes to the other to perform the Award, and *J. S.* after awards; whereas one was bound in an Obligation to the other (which was made after the Submiſſion, but before the Award) that the Obligee ſhould deliver up the Obligation, in full Satisfaction of all Matters between them, (and awards further in ſuch Manner, that all was good, if the aforeſaid Award was good) though this Obligation be out of the Submiſſion, becauſe

it was made after the Submiſſion, yet he is bound to perform it, becauſe it is to be given in Satisfaction of Matters contained within the Submiſſion. 1 *Rol. Abr.* 243.

10 Mod. 204. S. P. Gilb. Ca. 125. S. C. S. P.

7. If the Submiſſion be of a Term for Years of Land, and all thereupon depending; and the Award is that one ſhall pay the other 10 *l.* for the Rent that ſhall become due upon this Term at *Michaelmas* next enſuing; this is no good Award; for the Rent is not within the Submiſſion, in as much as the Rent may be extinct by Surrender, Eviction, *&c.* before *Michaelmas.* 1 *Rol. Abr.* 245.

8. But if the Condition of an Obligation be, to ſtand to the Award of *J. S.* and he Awards that one ſhall enjoy a certain Houſe, paying to the other 20 *l.* yearly, if the the Rent is not paid the Condition is broke. *Cro. Eliz.* 211.

9. So if an Award be that *A.* ſhall make a Leaſe to *B.* and that for this Leaſe *B.* ſhall pay to *A.* a certain Sum yearly, this is good. *Moor* 3.

10. Whether Intereſt accruing after the Submiſſion, may be awarded for Money due before, *quære*, and ſee *Winch* 114, 120.

SECT. IV.

Concerning thoſe Submiſſions which are ſaid to be General or Special, Abſolute or Conditional.

1. ANOTHER Thing to be obſerved concerning the Submiſſion is, That it is ſometimes *General*, as of all Suits, Debts, Dues, Demands, *&c.* whatſoever; or *Special*, as of a particular Thing, as of ſuch a Sum of Money, ſuch an Action depending,

depending, *&c.* and this has occaſioned another Diviſion, *viz.* ſuch as are *Abſolute* or *Conditional*; and this laſt has given Riſe to ſeveral Doubts and Diſputes. When the Submiſſion is abſolute, and of ſeveral Differences and Diſputes, the Arbitrators may make an Award of one or two, omitting the Reſt; and the Award will be good for ſo much as they ſettle.

2. But when the Submiſſion is conditional, *viz.* when it is of all Things in General, or of two or three Things in Particular, and it concludes, ſo that the Award be made of the (or of all the) Premiſſes, there it is neceſſary in many Caſes to ſettle and determine the whole Matters ſubmitted.

3. In Debt upon an Obligation conditioned to ſtand to the Award of *J. S.* for and concerning ſeven ſeveral Things, *ſo as the ſame Award be made, and delivered, in Writing before ſuch a Day*, &c. the Defendant pleaded, that the Arbitrator made an Award of ſome Things according to the Submiſſion, and of others not, *&c.* to which the Plaintiff demurred, becauſe he had not pleaded Performance of ſuch Things as were well awarded; but all the Court held, that as this Caſe is, the Defendant is not tied to perform any Part of the Award; for it is all one, where the Words are, *ſo that that Award be made of the Premiſſes*, &c. and *ſo as the ſame Award be made before*, &c. for the Words *the ſame Award* refer to all the Things before-mentioned; ſo that if any Part be omitted in the Award, it is void for all. Between *Riſden* and *Inglet*, *Cro. Eliz.* 838, 839.

4. In Debt on an Obligation for not performing an Award, it appeared that the Submiſſion was general, with a Condition *Ita quod*; and it was objected, that the Arbitrator having made an Award of one Thing only, the Award was void;

it was made after the Submiſſion, yet he is bound to perform it, becauſe it is to be given in Satisfaction of Matters contained within the Submiſſion. 1 *Rol. Abr.* 243.

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but it was held, that it appearing by the Award, that it was made *de præmiſſis præd'*, *&c.* which Words import, that he had made an Award of all that was referred to him, and ſo ſhall it be intended, unleſs the contrary be alledged and ſhewn by the Party, that the Award was good; but if the Submiſſion be of certain Things ſpecially mentioned, with a Condition that the Award ſhall be made of the Premiſſes, then the Arbitrator muſt make an Award of the Whole; otherwiſe it is void; but if divers Things be ſubmitted without any ſuch conditional Concluſion, the Award ſhall be good, though made but of one or two of them. *Baſpole's* Caſe, 8 *Co.* 97. *b.* 98. *a.* ſame Point, and ſame Difference taken, *Cro. Jac.* 200.

5. If *A.* and *B.* ſubmit all Controverſies of Woods and Underwoods, and all Quarrels and Suits between them, *ita quod*, and the Award is, that *A.* ſhall have the Underwoods, and that he ſhall pay to *B.* 50 *l.* and ſays nothing of the Woods, but awards further, that all Manner of Actions, Quarrels, *&c.* between them ſhall ceaſe; this is a good Award of all, becauſe the Beginning of the Award was (*we do award of the Premiſſes*); and alſo the Award is of Actions, *&c.* Between *Humfrey* and *Wiburn*, 1 *Rol. Abr.* 257.

6. If there be a general Submiſſion, with a conditional Concluſion, and in an *Aſſumpſit* brought for not Performing the Award made thereon, the Defendant pleads, that there was 4 *l.* due to him, which he offered to prove to the Arbitrator; but that the Arbitrator refuſed to take any Notice of it, or allow him any Thing in Recompence, but proceeded to make his Award, and thereby awarded general Releaſes of all Matters; yet this ſhall be a good Award; for he having awarded general Releaſes of all Matters, ſhews that he had all the

Matters

Matters in Difference in Contemplation, and that he did not deem this a juſt Debt. Between *Birks* and *Trippet*, 1 *Saund.* 32.

7. Agreed to be a ſtated Rule in Awards that are ſaid to be *de & ſup' Præmiſſ.* that if the Words uſed in them be in their own Nature more comprehenſive, and ſo extenſive to Things not within the Submiſſion; yet it ſhall be intended that there was no other Matter between the Parties, for them lay to hold on, but what was ſubmitted, if the contrary be not ſhewn. So *e converſo*, if the Words are more narrow, and leſs comprehenſive than to take in all the Matter of Submiſſion; yet it ſhall be intended that no more was in Controverſy, than what the Words naturally comprehend, if the contrary be not likewiſe ſhewn. 6 *Mod.* 232.

SECT. V.

Concerning Submiſſions by Bond, Covenant, Rule of Court, by Parol, or without Writing.

1. A Submiſſion by Bond, as it is the moſt frequent, ſo it is the moſt ſure Method, as has been before obſerved; it is adviſeable that the Penalty of the Obligation be ſomewhat more than the Thing in Controverſy is worth: Each Party muſt deliver a Bond to the other, *Mutatis mutandis*, only changing the Names; and if there are more than one of a ſide, who are ſo far intereſted as to make it neceſſary that they ſhould be Parties, they may enter into ſeparate and diſtinct Bonds, or they may be bound jointly in the ſame Bond.

Subſcribing Witneſs to an Arbitration Bond obliged to make Affidavit of the Execution. 10 Mod. 332. Stra. 1. 2 Barnes 55.

2. Sub-

2. Submiſſions by Covenant are but rarely uſed; but as an Award made on ſuch a Submiſſion may be good, it is neceſſary that the Covenants be equally binding, that they expreſs the Time, Place, *&c.* as much as a Submiſſion by Bond, and that there be likewiſe a Covenant, that neither of the Parties revoke the Authority they have given before the Award be made.

3. Submiſſions by Rule of Court are now very frequent, and is allowed to be the moſt expeditious Way they may be made, by adding the Party's Conſent at the Bottom of the Condition of the Bond, and then the Party may proceed which ever Way he pleaſes, or the Submiſſion may be made by a *Memorandum* in Writing, ſignifying their Conſent, according to the following Precedents.

4. Submiſſions by *Word* are ſeldom uſed, becauſe of the great Inconveniency which attends ſuch Submiſſions, not only in Reſpect to their Incertainty, which may be the Foundation of Perjury; but likewiſe, as they may be revoked at any Time before the Award made, without any Inconveniency; but however, as Perſons may ſubmit by Parol, and as they ſtill do, when the Controverſy is of ſome ſmall Matter, it is as neceſſary for the Parties to aſcertain the Matters, and all other the Circumſtances, as much in this, as in any other Kind of Submiſſion.

Precedents of the different Kinds of Submiſſions.

A Bond of Submiſſion, with Condition to ſtand to the Award of two Arbitrators, in Common Form.

KNOW all Men by theſe Preſents, That I *A. B.* of, *&c.* do owe, and am indebted unto *J. S.* of, *&c.* in the Sum of 100 *l.* of lawful Money of *Great Britain*, to be paid unto the ſaid *J. S.* his Executors, Adminiſtrators or Aſſigns, on, *&c.* next enſuing the Date hereof; to which Payment well and truly to be made, I bind my ſelf, my Heirs, Executors and Adminiſtrators, firmly by theſe Preſents; in *Witneſs* whereof, *&c.*

The Condition of the above Obligation is ſuch, That if the above Bounden *A. B.* his Heirs, Executors and Adminiſtrators, and of every of them, for and on his and their Parts and Behalfs, do and ſhall well and truly ſtand to, obey, abide, perform, obſerve and keep the Award, Order, Arbitrament, final End and Determination of *S. G.* and *D. K.* Arbitrators indifferently named, elected and choſen, as well for and on the Part and Behalf of the above Bounden *A. B.* as of the above named *J. S.* to arbitrate, award, order, adjudge and determine of and concerning all and all Manner of Actions, Cauſe and Cauſes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Accounts, Debts, Dues, Sum and Sums of Money, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, both in Law and Equity, or otherwiſe howſoever, which at any Time or Times here-

heretofore have been had, made, moved, brought, commenced, ſued, proſecuted, committed, omitted, done or ſuffered by or between the ſaid Parties, or any or either of them, ſo as the ſaid Award be made in Writing, and ready to be delivered to the ſaid Parties, or any or either of them, on or before the ——Day of——now next enſuing, then this Obligation to be void, *&c.*

A Bond with Condition to ſtand to the Award of three Arbitrators, or any two of them, and an Umpire appointed.

BE it known unto all Men by theſe Preſents, That *J. A.* of, *&c.* Eſq; do owe, and am indebted unto *B.* of, *&c.* Eſq; in the Sum of a Thouſand Pounds, *&c.* to be paid to the ſaid *B.* his Executors, Adminiſtrators, or Aſſigns, at or upon the, *&c.* to which Payment well and truly to be made, I bind my ſelf, my Heirs, Executors and Adminſtrators, firmly by theſe Preſents. *In Witneſs*, &c.

The Condition of this Obligation is ſuch, That if the above bound *A.* his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalfs, ſhall and do, in and by all Things, well and truly ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of——or any two of them, Arbitrators indifferently elected and named, as well by and on the Part and Behalf of the ſaid *A.* as by and on the Part and Behalf of the above-named *B.* to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits,

Suits, Bills, Bonds, Specialties, Covenants, Contracts, Promiſſes, Accounts, Reckonings, Sums of Money, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by or between the ſaid Parties, ſo as the Award of the ſaid Arbitrators, or any two of them, be made and ſet down in Writing, under their or any two of their Hands and Seals, ready to be delivered to the ſaid Parties in Difference, on or before the, *&c.* then, *&c.* And if the ſaid Arbitrators ſhall not make ſuch their Award of and concerning the Premiſſes, within the Time limited, as aforeſaid, then if the ſaid *A.* his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalf, do and ſhall well and truly ſtand to, obſerve, perform, fulfil and keep the Award, Determination and Umpirage (if the Umpire be named) of *G.* being a Perſon indifferently named and choſen between the ſaid Parties, for Umpire; (if not named) of ſuch Perſon as the ſaid Arbitrators ſhall indifferently chuſe, (for Umpire) in and concerning the Premiſſes, ſo as the ſaid Umpire do make and ſet down his Award and Umpirage in Writing, under his Hand and Seal, ready to be delivered to the ſaid Parties in Difference, on or before the, *&c.* then, *&c.*

If the Parties have a Mind to make their Submiſſion a Rule of Court, purſuant to the Act of Parliament, they may ſignify their Conſent in Writing, to be added to the Condition, as thus:

And it is hereby agreed, by and between the ſaid Parties, That theſe Preſents, and the Submiſſion

miſſion hereby made of the ſaid Matters in Controverſy, ſhall be made a Rule of his Majeſty's Court of *King's Bench*, to the End the ſaid Parties in Difference ſhall be finally concluded by the ſaid Arbitration, by theſe Preſents intended, purſuant to the Act of Parliament in that Caſe made and provided.

A Form of a Submiſſion to an Arbitration according to the Statute, for making Awards by Rule of Court.

MEmorandum, this firſt Day of, *&c. A. B.* and *C. D.* being deſirous to end and determine divers Controverſies, Suits and Quarrels, that have been between them, (for which there is no other Remedy but by Perſonal Action or Suit in Equity) did agree to ſubmit, and did ſubmit and refer all the ſaid Controverſies, Suits and Quarrels to the Award of *E. F.* and *G. H.* Arbitrators indifferently choſen between them, to be made in Writing, under the Hands and Seals of the ſaid Arbitrators, before the —— Day of ——— next enſuing: *And* the ſaid Parties did mutually promiſe and oblige themſelves reſpectively, that they will perform and execute ſuch Award as the Arbitrators ſhall make in the Premiſſes: And the ſaid Parties did further agree, That their ſaid Submiſſion ſhould be made a Rule in his Majeſty's Court of *Common Pleas*, (or *King's Bench*) at *Weſtminſter*; and that they will finally be concluded by the Arbitration that ſhall be made concerning the Premiſſes, by the ſaid Arbitrators, purſuant to ſuch Submiſſion.

Some

Some may affect to have the Bond of Submiſſion thus.

KNOW all Men by theſe Preſents, That I *A. B.* of *G.* in the County of *S.* Gent. am held and firmly bound to *C. D.* of *N.* in the County aforeſaid, Yeoman, in one hundred Pounds of good and lawful Money of *Great Britain*, to be paid to the ſaid *C. D.* his certain Attorney, Executors, Adminiſtrators or Aſſigns; to which Payment well and truly to be made, I bind my ſelf, my Heirs, Executors and Adminiſtrators, firmly by theſe Preſents, ſealed with my Seal. Dated, *&c.*

A Special Submiſſion where the Matters are recited.

The Condition of the above Obligation is ſuch, That if the above bounden *A.* his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalfs, ſhall and do, in all Things, well and truly ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Order, final End and Determination of *G. H.* and *J. K.* both of, *&c.* Arbitrators indifferently choſen and elected, as well on the Part and Behalf of the above bounden *A.* as of the above named *B.* to arbitrate, award, order, and determine of, for, and concerning one Action of Treſpaſs, now depending in his Majeſty's Court of *King's Bench*; and alſo of, for, and concerning a Suit now depending in the High Court of *Chancery*, between the ſaid Parties; and alſo of, for, and concerning an Account now ſubſiſting and unbalanced between the ſaid Parties; ſo that the ſaid Award, Order, and Determination, be made of, for, or concerning the Premiſſes, or any Part of them, in Writing, under their Hands and Seals, ready to be delivered to the ſaid Parties, or to ſuch of

of them as ſhall deſire the ſame, on or before, *&c.* then this Obligation to be void and of no Effect, *&c.*

From two Perſons, Attornies of Adminiſtrators.

THE Condition of this Obligation, *&c.* Whereas Differences have ariſen between *A.* and *G.* ſince deceaſed, about and concerning ——— which Differences not being adjuſted by the ſaid *A.* and *G.* the above bound *B.* and *C.* the lawful Attornies, and for and on the Behalf of *D.* and *E.* Adminiſtrators of the Goods and Chattels of the ſaid *G.* and the ſaid *A.* have agreed to refer the ſaid Differences to Arbitrators, *&c.* to arbitrate, *&c.* concerning the ſame, as here under is mentioned: Now, *&c.* that if the ſaid *B.* and *C.* and the ſaid *D.* and *E.* and either of them, their Executors and Adminiſtrators, ſhall and do ſtand to, perform and keep the Award, Order, Arbitrament, final End and Determination, which the ſaid Arbitrators as aforeſaid, ſhall make, *&c.* in and concerning the ſaid Matters in Difference, and all or any Actions, Suits, Accounts, Sum and Sums of Money, Damages, Claims and Demands concerning the ſame; then, *&c.*

Between the Maſter and Owners, and Freighters of a Ship.

THE Condition, *&c.* That if the above bound *A.* who was late Maſter of the Ship ——— and the above bound *B. C.* and *D.* Part-Owners of the ſaid Ship, and the reſt of the Part-Owners thereof,

thereof, do and ſhall, in and by all Things, well and truly ſtand to, perform and keep the Award, Judgment, final End and Determination of——— Arbitrators indifferently choſen, as well by, and on the Part and Behalf of the ſaid *A. B. C.* and *D.* as by and on the Part and Behalf of the above-named *E.* and *G.* to arbitrate, judge and determine of and concerning all and all Manner of Actions Suits, and Cauſes thereof, Debts, Dues, Covenants, Contracts, Agreements, Sums of Money, Controverſies, Differences, Claims and Demands between the ſaid Parties, or any of them, relating to, or concerning the ſaid Ship——and her late Voyage ——and thence to——in the Year——ſo as the ſaid Arbitrators ſhall make, *&c. as uſual.*

Between two Maſters of a Ship, for themſelves and Owners, about a Prize.

WHEREAS Differences, *&c.* between the above bound *A.* and the reſt of the Part-Owners of the Ship———, whereof the ſaid *A.* is Commander, of the one Part, and the above-named *B.* and the reſt of the Part-Owners of the Ship———, whereof the ſaid *B.* is Commander, of the other Part, concerning the Parts or Proportions claimed by, and belonging to the Owners of the ſaid ſeveral Ships, in reſpect thereof, and in a *French*———or Veſſel, called the———, Maſter, and her Loading, which was lately taken as a Prize, by the ſaid *A.* and *B.* in and with the ſaid Ships — and — all Monies ariſing thereby: *Now, &c.* that if the ſaid *A.* and the reſt of the Part-Owners of the ſaid Ship——, their Executors and Aſſigns, do and ſhall, in and by all Things, well and truly

ſtand to, perform and keep the Award, Judgment, final End and Determination of, *&c.* Arbitrators indifferently named, by, and on the Behalf of the ſaid Parties in Difference, to arbitrate, judge and determine the ſaid Matters in Difference between them, and all or any Actions, Suits, Accompts, Sums of Money, Damages, Claims and Demands concerning the ſame, ſo as their Award ſhall be made, *&c.*

Note, *That in moſt Bonds from one or more Part-Owners, on Behalf of the reſt, are put in juſt before* Now, *&c. theſe Words*, and the ſaid———, hath undertaken for the reſt of the Part-Owners of the ſaid Ship, Performance of ſuch Award as ſhall be made concerning the ſame; and *then*, the Condition, that if the ſaid———, and the reſt of the Part-Owners of the ſaid Ship, their Executors, Adminiſtrators and Aſſigns.

Between the Aſſignees in a Commiſſion of Bankrupt, and a Maſter of a Ship that belonged to the Bankrupt.

WHEREAS Differences, *&c.* between the above bound *A.* and the above named *B.* and *C.* Aſſignees and Truſtees, by Virtue of a Commiſſion of Bankruptcy awarded againſt *E.* by his Conſent and Deſire, to defeat Attachments about and concerning an Accompt depending between the ſaid *A.* and *E.* concerning the Ship——, whereof the ſaid *A.* was Maſter; which Difference concerning the ſaid Ship, and all or any other Accounts, Matters and Things depending between the ſaid *A.* and the ſaid *E.* they the ſaid Parties have

have agreed to refer to the Award, Judgment and Determination of———, Arbitrators indifferently named and choſen, by and between the ſaid Parties in Difference, in and concerning the Premiſſes: *Now*, *&c.* that if the ſaid *A.* do and ſhall, *&c.*

From the Part-Owners and Maſter, to be made a Rule of Court, and another ſort of Penalty.

WHEREAS Differences and Suits have ariſen, and are depending between *A. B. C.* and *D.* of, *&c.* Part-Owners of the good Ship or Veſſel, called the *A.* Burthen about —— Tons, whereof *E.* late was Maſter, of the one Part, and the ſaid *E.* of, *&c.* of the other Part, about and concerning the ſaid Ship, and her late Voyage to *J.* and back to *London*, and the Accompts thereof; all which Differences and Accompts, and all other Matters and Things concerning the ſaid Ship, and her ſaid late Voyage, and all Actions, Suits and Cauſes thereof, Accompts, Reckonings, Sum and Sums of Money, Payments, Covenants, Agreements, Controverſies, Damages, Claims and Demands between the ſaid Parties, concerning the ſame, all the ſaid Parties do hereby agree to refer, and the ſame are hereby referred and ſubmitted to the Arbitrament, Judgment, final End and Determination of *E. G.* and *H.* of, *&c.* or any two of them, Arbitrators indifferently named and choſen, by and between the ſaid ſeveral Parties, to award, order, judge and determine of and concerning the ſame, as hereunder is mentioned. *Now* therefore theſe Preſents witneſs, That the ſaid *A. B. &c.* for themſelves, their Executors and Adminiſtrators, ſeverally and reſpectively, *&c.* Judgment

and Determination, in, about and concerning the ſaid Matters hereby referred; which *E. G.* and *H.* Arbitrators as aforeſaid, or any two of them, ſhall make, declare and ſet down in Writing Indented, under their, or any two of their Hands and Seals, on or before, *&c.* to the Performance whereof the ſaid *A. B. C.* and *D.* bind themſelves, their Heirs, Executors and Adminiſtrators, ſeverally and reſpectively, and not jointly, nor, unto the ſaid *E.* his Executors, Adminiſtrators and Aſſigns, in their ſeveral Proportions, according to their Parts in the ſaid Ship, of the Sum or Penalty of 1000 *l.* of lawful Money of *Great Britain*, firmly by theſe Preſents; and it is hereby agreed, by and between the ſaid Parties, that theſe Preſents, and the Submiſſion hereby made of the ſaid Matters in Controverſy, ſhall be made a Rule of his Majeſty's Court of *King's Bench*, to the End the ſaid Parties in Difference ſhall be finally concluded by the ſaid Arbitration, by theſe Preſents intended, purſuant to the late Act of Parliament in that Caſe made and provided. *In Witneſs, &c.*

A Submiſſion to Arbitration, with Covenants to perform the ſame, and with Exceptions in the Submiſſion.

THIS Indenture made, *&c.* between *A. B.* of, *&c.* of the one Part, and *C. D.* of, *&c.* of the other Part, **Witneſſeth**, That the ſaid *A. B.* and *C. D.* do by theſe Preſents, willingly compromiſe and ſubmit themſelves, and either of them, to the Award, Arbitrament, Determination and Judgment of *E. F. G. H.* and *J. H.* Arbitrators indifferently named, elected and choſen by the ſaid Parties, to arbitrate, award, order, determine finally,

finally, and to make, judge, decree of, for, upon and concerning all and all Manner of Actions, Cauſes of Actions, Suits, Debts, Strifes, Accompts, Reckonings, Sum and Sums of Money, Treſpaſſes, Variances, Quarrels, Bonds, Specialties, Matters and Demands whatſoever, had, made, riſen, moved or depending, or which might have been had or moved, between the ſaid Parties in the King's Majeſty's Court of *Common Pleas*, or before, *&c.* and except one Debt of eighteen Pounds due to the ſaid *A. B.* by the ſaid *C. D.* for the Price of certain Corn, *&c.* and except all Lands and Tenements of the ſaid *A. B.* and ſuch like Exceptions, *&c.* ſo always that the ſaid Arbitrators do make their Award, Order, and Judgment, of and concerning the Premiſſes, to be made by Writing Indented, under all their Hands and Seals on this Side, and before the 10th of *June* now next enſuing, and one Part of the ſame deliver, or cauſe to be delivered unto the ſaid *A. B.* or his certain Attorney or Attornies, Deputy or Aſſigns in that Behalf, requiring the ſame at, or in, *&c.* and the other Part of the ſaid Award to the ſaid *C. D.* his Attorney or Attornies, Deputy or Aſſigns, requiring the ſame at the ſaid Day and Place; and ſo always, that the ſaid Arbitrators do not, by the ſaid Award, order or appoint any Act or Acts, Thing or Things, to be done or performed, by, or to any Perſon or Perſons, other than to or by the ſaid Parties to theſe Preſents, their Heirs, Executors, Adminiſtrators or Aſſigns, or ſome of them, and not to or by any Stranger or Strangers to this preſent Submiſſion; and the ſaid *A. B.* and *C. D.* and either of them, for themſelves, their Heirs, Executors and Adminiſtrators, and the Heirs, Executors and Adminiſtrators, of either of them, do by theſe Preſents mutually covenant, conclude, promiſe and agree, to, and with the other his Executors, Adminiſtrators, and every of them, that neither they,

nor either of them, will at any Time hereafter revoke their Authority hereby given to the ſaid Arbitrators, nor Diſcharge them, nor either of them, in the ſaid Faculty or Power of Arbitration, and that they and either of them, and the Heirs, Executors and Adminiſtrators of either of them, for his and their Parts, ſhall and will well and truly obſerve, perform, fulfil and keep, all and every Clauſe, Sentence, Article, Submiſſion and Agreement in theſe Preſents mentioned, on his or their Part to be performed and kept, according to the Tenor and true Intent of the ſame.

CHAP. IV.

Parties to the Submiſſion.

WE come now to inquire into the third Thing, which is abſolutely eſſential to every Award, which is, that there be proper Parties to the Submiſſion; we ſhall therefore in this Chapter take Notice, and ſhew what Perſons they are which the Law allows or diſables from being Parties; how the Submiſſion and Award is to be made between them, and who can take Advantage of the Award, or are bound by it, though they have not been Parties to the Submiſſion.

Sect. I. What Perſons the Law allows of as good Parties to the Submiſſion.

Sect. II. What Persons are disabled from being Parties.

Sect. III. How the Submission, and the Award thereupon, may be made between them.

Sect. IV. Who may take Advantage of the Award, or are bound by it, though they have not been Parties to the Submission.

SECT. I.

What Persons the Law allows of as good Parties to the Submission.

1. IT is clear, that all Persons who are capable by Law of disposing of their Properties, or of making any Contract or Agreement relating to them, are capable, and may be Parties to a Submission; and that they may not only bind themselves, but likewise may engage for Strangers, for whom they shall be answerable, and may likewise bind their Heirs, Executors and Administrators.

2. If there be a Controversy for a certain Thing between *A.* and *B.* of the one Part, and *C. D.* and *E.* of the other Part, and *C.* in Consideration of 6 *d.* given him by *A.* and *B.* submits the Matter for himself, and *D.* and *E.* and assumes to stand to the Award, and *A.* and *B.* submit of the other Part, and the Arbitrators award that *C.* shall pay so much to *A.* and *B.* in Satisfaction of the Controversy; this is a good Award, and *C.* is bound to perform it, though it concerns two Strangers

to the Submiſſion, for *C.* hath undertaken for them. 1 *Rol. Abr.* 244.

3. One Partner having ſubmitted on his own and his Partner's Behalf, it was held by the Court, That though the Partner who did not ſubmit was not bound by the Award, yet he who ſubmitted and undertook for him, was obliged to ſee that he performed what was awarded for him to do; otherwiſe it was a Breach of his Promiſe. 2 *Mod.* 228.

4. The Condition of a Bond of Submiſſion recited that there were Differences between the Plaintiff *A.* and one *B.* who lived at *Hamburgh*, and that the Defendant *C.* as Attorney for the ſaid *B.* and the Plaintiff *A.* had ſubmitted all Matters, *&c.* between *A.* and *B.* unto the Arbitrators, *&c.* therefore if the Defendant *C.* did perform the Award, then, *&c.* the Arbitrators awarded, That the Defendant *C.* on the Behalf of *B.* ſhould pay to the Plaintiff *A.* 300 *l.* and that the Plaintiff ſhould execute a general Releaſe unto the Defendant *C.* and this Award being ſet forth in the Declaration, the Defandant demurred: And it was argued, that this was an Award only *ex parte*, and therefore void; for that there was no Award on the Part of *B.* who was the principal Perſon concerned, for the Differences were between him and the Plaintiff, and not between him and the Defendant; and therefore the Awarding the Plaintiff to releaſe to the Defendant ſignified nothing, becauſe *B.* can take no Benefit by ſuch Releaſe, for he will ſtill remain liable to, and charged with the Demands of the Plaintiff; for the Award has not determined the Differences to which the Parties ſubmitted; for thoſe were between the Plaintiffs *A.* and *B.* and not between the Plaintiff *A.* and *C.* the Defendant; and after many Debates it was ſo adjudged. But *Note*, The Court allowed that the Submiſſion by the Defendant as Attorney

Attorney for *B.* was good, and would have obliged him to pay the Money awarded, if the Award had been reciprocal with reſpect to *B.* alſo. Adjudged *Trin. 9 W. & M.* between *Bacon* and *Dubarry*, *Carth.* 412, 413. 1 *Salk.* 70. S. C.

5. If the Condition of an Obligation be, That whereas *A.* has, by himſelf and his Son, ſubmitted to the Award of *B.* and *C. Ita quod, &c.* before the 1ſt of *May*, and if they make none, to ſuch Umpire, as they ſhould chuſe to be made before the firſt of *June*, and the Arbitrators make no Award, but chuſe an Umpire, who makes an Award, but *Quoad* the Son awards nothing; this is a void Award; for though the *Ita quod* be in the Clauſe referring to the Arbitrators, and the Award is made by the Umpire, yet the *Ita quod* by Conſtruction relates as well to the Umpire as Arbitrators. Between *Bean* and *Newbury*, 1 *Lev.* 139. adjudged.

If one as Attorney to *J. S.* ſubmits to an award, this ſhall bind the Attorney, but where the Award was that the Attorney on the Behalf of *J. S.* ſhould pay to the Plaintiff 20 *l.* and then Plaintiff and Defendant on Behalf of *J. S.* ſhould execute mutual Releaſes to each other *ad uſum eorum alterius* of all Actions, *&c.* concerning the Account ſubmitted, it was adjudged a void Award, becauſe of one Part only, the Releaſes being to be made between Plaintiff and Defendant, where they ought to be between the Plaintiff and *J. S.* or to be delivered to the Attorney for the Uſe of *J. S.* for a Releaſe to the Attorney cannot advantage *J. S.* and the Court declared they would, if they could, have conſtrued it to be a Releaſe to *J. S.* but the Words (*ad uſum alterius eorum*) exclude this Conſtruction. 12 *Mod.* 129.

If a Perſon ſubmits to an Award on the Part and Behalf of a Stranger, it was ſaid, That his Bond ſhould be forfeited if the Stranger does not do what

what the Award requires him to do, and the Court inclined ſo. *Comyns's Rep.* 184. *pl.* 115.

By the above Caſes it appears, that tho' one Perſon may ſubmit for another, and is bound to perform whatever was awarded relating to ſuch Perſon, and likewiſe, that a Perſon may bind himſelf by ſubmitting by Attorney; yet it is regularly neceſſary that the Award be made between them who are chiefly intereſted in the Matters in Controverſy.

SECT. II.

What Perſons are diſabled from being Parties.

1. AS it hath been already obſerved, that all Perſons, who by Law may diſpoſe of their Properties, may likewiſe be Parties to a Submiſſion; it ſeems that Infants, Ideots, Lunaticks and
* 9 E. 3. 23. Madmen, are excluded; alſo * Feme Coverts without their Huſbands, and ſuch as are attainted of Felony or Treaſon, and Perſons outlawed or waved in Perſonal Actions, for they have no Goods. 36 *H.* 6. 26.

2. It was held, that Perſons Civilly dead, as Monks, Fryers, Canons, profeſſed Nuns, *&c.* could not ſubmit. 14 *H.* 8. 6.

3. The Submiſſion of ſuch as are compelled thereto by Threats and Impriſonment, *&c.* is not good, for the Conſent ought to be free. 8 *Aſſ.* 25.

4. So they who have joint Power with others, cannot ſingly ſubmit in relation to ſuch Power, without their Fellows; as a Dean without a Chapter, a Mayor without his Commonalty, the Maſter of

of a College or Hoſpital without his Fellows; and ſo of other Societies and Guilds. 21 *E.* 4. 13.

5. As to a Submiſſion by an *Infant*, there has been ſome Doubt about it, the Year-Book of 13 *H.* 4. 12. ſays expreſly, That if an Infant ſubmits a Battery done to himſelf, and an Award is made thereupon, yet this ſhall not bind the Infant.

6. So if an Infant ſubmits a Treſpaſs done to him in his Land, and an Award is made thereupon, yet this ſhall not bind him. 10 *H.* 6. 14.

7. If one gives Bond, in the Condition of which is recited, that an Infant hath ſubmitted to the Award of *J. S.* and it is conditioned that he ſhall perform the Award, it is void. *March* 111, 141.

8. Afterwards it coming in Queſtion, Whether the Submiſſion of an Infant was good, the Judges ſeemed to think that it was good, ſo as to bind the Party of the other Side; and as to the Infant himſelf, that it was only voidable, and a Matter to which he may agree or diſagree, when he came to full Age. Between *Knight* and *Stone*, 1 *Jones* 164.

9. In Debt upon an Obligation againſt *A.* conditioned, that if he, and *B.* his Son, and each of them, perform the Award of *C. D. &c. Ita quod, &c. A.* the Defendant pleads, that his Son was within Age; to which the Plaintiff demurred. And it was argued, that a Submiſſion by an Infant is void, and a Submiſſion being void in Part, both that and the Award are void *in Toto.* But the Court would give no Opinion as to the Point, whether the Submiſſion by an Infant, or by the Father on Behalf of an Infant, be void; but they held clearly, that the Father's Submiſſion on Behalf of himſelf was good, and the Arbitrators may make their Award between him and the Plaintiff only; and the Plea does not anſwer to that, but contains a collateral Matter in Bar; and therefore,

though

though no Breach be aſſigned, nor no Award pleaded in the Replication, yet Judgment was given for the Plaintiff. Between *Bowyer* and *Blorkſidge*, 1 *Lev.* 17.

10. Concerning Submiſſions by Feme Coverts, it is held clearly, That when a Right or Intereſt veſts in the Huſband by the Marriage, or when he becomes chargeable, his Submiſſion alone is ſufficient. So it was held, That the Submiſſion of a Term which the Huſband had in Right of his Wife, was good, though ſhe was but Adminiſtratrix. *Style* 351.

11. But if any Thing is to be done by her which the Law requires, it is otherwiſe, with reſpect eſpecially to her Inheritance, or ſuch Things as are given her in Truſt with her Huſband's Conſent and Privity; in which Caſes ſhe muſt be made a Party. 5 *Co.* 77. *b.*

SECT. III

How the Submiſſion, and the Award thereupon, may be made between them.

AS there may be ſeveral Parties to an Award, who may enter into ſeveral diſtinct Bonds, or be bound jointly and ſeverally in the ſame Bond, Care muſt be taken how the Submiſſion and Award be made, as appears by the following Caſes.

1. If there be a Controverſy concerning certain Lands between *A B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, ſubmit to the Award of *J. S.* and thereupon *A.* binds himſelf in an Obligation of 1000 *l.* to *B.* and *C.* with Condition to perform the ſaid Award of *J. S.* touching this, and *B.* and *C.* becauſe they

would not be bound the one for the other, enter into ſeveral Obligations of 1000*l.* a-piece to *A.* with ſeveral Conditions for the Performance of the Award of the ſaid *J. S.* and the Arbitrators award that *A.* ſhall make a Releaſe of all his Right in the Lands to *B.* and *C.* and in Conſideration thereof, *B.* and *C.* ſhould pay 300*l.* to *A.* and in an Action of Debt by *A.* againſt *B.* upon this Obligation, for Non-performence of the Award, it was held to be good; and the Breach aſſigned was, That *nec B. nor C.* paid the 300*l.* at the Time appointed by the Award; all this Matter being diſcloſed in the Pleading; for upon all the Matter ſhewn, it appears that *C.* is no Stranger to the Award, for he and *B.* ſubmitted themſelves jointly, though they entered into ſeveral Obligations. Between *Haies* and *Haies*, *Cro. Car.* 433.

2. If *A.* and *B.* of the one Part, and *C.* of the other Part, ſubmit themſelves to the Award of *J. S.* of all Matters between them, *J. S.* may make an Award of any Matter between *A.* only, and *C.* though *B.* hath nothing to do therewith, for the Submiſſion ſhall be taken diſtributively. 1 *Co.* 98. But it is ſaid, that if the Submiſſion was with an *Ita quod*, ſomething muſt be awarded to *B. Style* 151.

3. If *A.* and *B.* of the one Part, and *C.* of the other Part, ſubmit to the Award of *J. S.* who awards that *B.* ſhall pay a certain Sum of Money unto *C.* in Satisfaction of all Differences between *A.* and *B.* of the one Part, and *C.* of the other Part; this is a void Award as to *A.* and he is not concerned therein; for the Money paid by one, can be no Satisfaction for the other. *Style* 471, adjudged *niſi.*

4. If three Perſons, *ſcilicet A. B.* and *C.* of the one Part, and *D.* of the other Part, ſubmit themſelves to the Award of *J. S. ita quod, &c.* and he makes

makes an Award between *A.* and *B.* of the one Part, and *D.* of the other Part, and makes no Award between *C.* and *D.* this is not good, becauſe the Submiſſion is conditional; and it is recited in the Submiſſion, that there were divers Controverſies between them all. 1 *Rol. Abr.* 261.

The Condition of a Bond of Submiſſion recited, that there were Differences between ſeveral Perſons on one Side, and ſeveral on the other; and that the Award may be made between them, or any of them; and it was held, that upon this Submiſſion the Arbitrators may make an Award between any one of the Parties of the one Side, with one of the Parties of the other. *Hard.* 399.

This Matter is carried much farther in Equity, if the following Caſe will be allowed a good Precedent.

A. and *B.* Executors of *J. S.* on the one Part, and *C.* his Widow on the other, ſubmit to Arbitration, the Arbitrators may make an Award, not only of Matters in Difference between *A.* and *B.* jointly, or *A.* and *B.* ſeparately, and *C.* but alſo of Matters between *A.* and *B.* provided they have Knowledge of the whole fact, and all the Parties intereſted are before them. Between *Carter* and *Carter*, 1 *Vern.* 259.

SECT. IV.

Who ſhall take Advantage of the Award, or are bound by it, though they have not been made Parties.

1. IF divers on the one Part have done a Wrong or Treſpaſs to another, and he to whom the Wrong is done, and one of the others, ſubmit themſelves to an Award; upon the Award made, the others, though not Parties to the Submiſſion, ſhall

ſhall have Advantage in Extinguiſhment of the Treſpaſs. 7 *H.* 4. 31.

2. If *A.* hath the Cuſtody of my Cattle, and during the Cuſtody they do a Treſpaſs to *B.* and *A.* and *B.* ſubmit this Treſpaſs to Arbitrament, and an Award is made, and *A.* performs it; if *B.* brings Treſpaſs againſt me for this Treſpaſs, I may plead in Bar the Award between the Plaintiff and the Stranger. 7 *H.* 4. 31. *b.* 1 *Rol. Abr.* 268.

3. An Award made upon the Submiſſion of the Predeceſſor Prior, ſhall bind the Succeſſor. 2 *H.* 4. 4.

4. If *A.* and *B.* ſubmit to the Award of *J. S.* and he awards that *A.* ſhall pay to *B.* 30 *l.* within two Months next following, and that upon Payment thereof they ſhall give mutual Releaſes to one another, and within the ſaid two Months *B.* dies, the Money ſhall be paid to his Executor, and thereupon the Executor muſt releaſe, for the Award creates a Duty: Adjudged in an Action brought by the Executor, upon the Bond for Non-performance of the Award. *Mich.* 1 *Will. & Mar.* Between *Dawny* and *Voſcy*, 2 *Vent.* 249.

5. An Award was worded in the Disjunctive, that *he or his Executor* ſhould perform, *&c.* and *Holt* C. J. ſeemed inclined to reject the Word *Executors*, not but that an Award (he ſaid) may extend to Executors, and bind them; but becauſe the Executors, as Repreſentatives, would be liable of Courſe. 1 *Salk.* 69.

CHAP.

CHAP. V.

The Arbitrators and Umpire.

THE *Arbitrators* are private extraordinary Judges, choſen by the Parties to give Judgment between them, to end the Debate; they are called Arbitrators from the Word *Arbiter*, and the Arbitrary Power with which they are inveſted.

An *Umpire* may be defined *one* Arbitrator, who is uſually appointed, when the Parties ſubmit themſelves to the Arbitrament or Award of certain Perſons; and if they cannot agree, or are not ready to deliver their Award in Writing before ſuch a Time, then to the Judgment of another as *Umpire*; this is the Effect of the Bond of Submiſſion.

Though the Law has not been very exact in deſcribing the neceſſary Qualifications of an Arbitrator, nor in preſcribing Rules concerning their Partiality, Honeſty and Judgment; yet it will be neceſſary in this Chapter to ſay ſomething, as well of the Qualifications of the Arbitrators, as of their Authority and Duty, together with the Authority and Duty of the Umpire, when they begin and when they end, *&c.*

Sect. I. Who may be proper Arbitrators.

Sect. II. Concerning their Authority and Duty.

Sect. III.

Sect. III. Revocation of their Power and Authority, and the Conſequence thereof.

Sect. IV. Concerning the Umpire, and when his Authority commences.

SECT. I.

Who may be proper Arbitrators.

1. AS the Arbitrators are Perſons of the Parties own chuſing, and as the law preſumes that every Man will be ſo wiſe as to pitch upon a Perſon, whoſe Underſtanding and Honeſty he can rely on; it has ſeldom happened that an Award was held void, when there appeared nothing elſe to vitiate it, eſpecially in a Court of Law; but though the Courts of Law have been pretty ſtrict in this particular, yet Awards have, and are often ſet aſide in a Court of Equity, for Corruption and Want of Underſtanding in the Arbitrators.

2. It is therefore the Intereſt of both Parties, to chuſe Men of Honeſty and Underſtanding to be their Arbitrators, and to acquaint them truly of the Facts they are to go upon; for if they appear to be miſtaken in a Matter of Fact, a Court of Equity will ſet aſide the Award. 2 Vern. 755.

3. But that a bare Suggeſtion of Want of Underſtanding, or Want of Honeſty, will not be ſufficient; the Proof muſt be ſtrong, and the rather, becauſe, as was ſaid before, they are of the Parties own Chuſing, who by his Choice of them, admitted them to be wiſe and honeſt enough for his Purpoſe; but if he happens to be miſtaken, it wil-

be good Proof for him, with Reſpect to their Underſtanding, to ſhew,

4. That they, or one of them, was an Infant, and of ſuch an *Age*, as not to be capable of judging of the Matter in Controverſy; for alledging or proving him to be an Infant generally, without ſhewing that the Matter was not level to his Underſtanding, will not be ſufficient.

5. That they were *Ideots* or *Lunaticks*, *Deaf*, *Dumb*, or *Blind*, which may be proved by any other Act of theirs, as well as by any Error or palpable Miſtake relating to the Award.

6. As to *Honeſty* and *Indifferency* (*Weſt* ſays) that they muſt be void of Malice and Favour to either of the Parties; That they muſt not be notorious by Outlawry, excommunicated, irreligious, nor covetous; for though they have abſolute Power, yet their Judgment or Sentence ought to be ſincere and incorrupt, according to Right and Equity, without Malice, Flattery, and every other vicious Affection or Perturbation, which may in any Sort lead them awry from the right Path of Juſtice and Equity, though the Law preſcribes no Rules herein. *Weſt. Symb. Part* 2. *Sect.* 27.

7. If a Submiſſion is to *three* Arbitrators, or any Two of of them, and Two of them by Fraud or Force will exclude the other, that alone is ſufficient to vitiate the Award; or if they have private Meetings, and admit one of the Parties, but give no Notice to the other, but ſuffer the Party's Attorney, whom they admitted to draw up the Award, ſuch Award ſhall be ſet aſide for Partiality and Unfairneſs. *Mich.* 1705, between *Burton* and *Knight*, 2 *Vern.* 514.

8. It is a general Rule in Equity, that when it appears that any one of the Arbitrators were any way intereſted in the Matters in Controverſy, the Award is to be ſet aſide.

9. The

9. The Condition of a Bond of Submiſſion recited, that *A.* the Plaintiff, and *B.* the Defendant ſhould perform the Award of Four, whereof *A.* the Plaintiff was named as one; and it was inſiſted upon by Serjeant *Hard.* among other Things, that the Award was void upon this Account, and that a Perſon who is to perform the Award, cannot be both a Judge and a Party; and that it was a principal Challenge, if an Arbitrator be one of the Jury; much leſs muſt the ſame Perſon be both Arbitrator and Party; but there is no Judgment in the Caſe. *Hard.* 44.

10. It is the ſtrongeſt Argument of Partiality, to ſhew that the Arbitrators received from either of the Parties any conſiderable Sum of Money, or any other Preſent, which may be a Temptation to them to act corruptly; but the Sum or Preſent muſt be proved to be ſo exorbitant as to induce the Court to believe that it biaſſed their Judgments, otherwiſe it will be of no Effect.

SECT. II.

Concerning their Authority and Duty.

1. AS it is by the Submiſſion, that the Arbitrators are armed with all the Power and Authority which they have, it is neceſſary for them to be very careful, that they ſquare themſelves according to it, otherwiſe they will be apt to do the Parties a Prejudice, when they intended them a Kindneſs by the Award they make; it is therefore neceſſary for them to know when their Authority begins, and when it ends.

2. The Arbitrators may make their Award the very Day the Bonds of Submiſſion bear Date, and it ſhall be good; ſo if they make their Award

before the Bonds of Submiſſion are entred into, and publiſh it afterwards, it ſhall be good. *Latch* 14, 60.

3. In Debt upon a Bond, conditioned to perform an Award, the Defendant pleaded, *Nullum fecerunt Arbitrium*; the Plaintiff replies, and ſets forth the Award, which did expreſs the Bond of Submiſſion to be dated the 7th of *February*, whereas it was dated the 10th of *February*; and for that Miſrecital the Defendant demurred; but the Court held clearly, that it did not hurt the Award. Between *Toll* and *Dawſon*, 1 *Vent.* 184.

4. The Condition of a Bond of Submiſſion was, to ſtand to the Arbitration of four Arbitrators; ſo as the Award be made in Writing, ready to be delivered to the Parties, before the 6th Day of *January* then next following; and the Arbitrament was made the 5th Day of *January*, betwixt the Hours of 8 and 9 in the Night; and whether the Defendant be bound to perform it, or not, was the Queſtion; and after Argument, the Court held, that it was well enough for the Time, and that the Defendant ought to perfom it, for it is made before the 6th Day; and altho' it be made in the *Night* of the 5th Day, it is well; for Things done in the Night, where perſonal Attendance is not reqiſite, are good, and the rather, becauſe that an Arbitration is a judicial Act. Between *Withers* and *Drew*, *Cro. Eliz.* 676.

5. The Arbitrators cannot make their Award by Parcels. 1 *Rol. Abr.* 250. So if Two ſubmit all Debts, Treſpaſſes, and other Things, *ita quod* the Award be made before ſuch a Day; if the Arbitrators make an Award of Debts at one Day, and of Treſpaſſes at another Day, and of other Things at another Day, though they are all before the Day appointed, yet this is not a good Award as to the

two

two laſt Awards, becauſe they have Power to make but one Award. 39 *H.* 6. 12.

6. But the Arbitrators may at one Day conſider one Point, and at another Day another, and at a third the third Point; and then give one Judgment upon all the Points; ſo that the Judgment ought to be one, and not ſeveral. 1 *Rol. Abr.* 250.

7. As the Arbitrators are obliged to take Notice when their Authority commences, in like Manner are they obliged to take Notice when it ends; for they cannot regularly reſerve any Thing for their future Judgment, when the Time allowed them is expired.

8. If *A.* and *B.* ſubmit to the Award of *J. S.* ſo that he makes his Award before the 8th of *March*, and *J. S.* accordingly makes his Award, that *A.* ſhall pay to *B.* 30 *l. viz.* 10 *l.* at *Michaelmas*, 10 *l.* at *Chriſtmas*, and 10 *l.* at *Lady-Day*; and if before the ſaid laſt Payment, *videretur* to the ſaid *J. S.* that *A.* was engaged for the ſaid *B.* in any Debt not ſatisfied, that then the ſaid *B.* ſhould repay unto the ſaid *A.* ſo much Money as the ſaid Debt amounted to; this Award is void, becauſe not final, for Part is reſerved to his future Judgment; which an Arbitrator cannot do. Between *Winch & al'* and *Sanders*, *Cro. Jac.* 584.

9. But it is ſaid, that if the Award had been, that if *A.* ſhews any Bill of Debt to ſuch a Sum, that then this Sum certain ſhall be repaid, perhaps it may be a good Award. *Ibid.*

10. If an Award be, that one ſhall pay ſo much Money to the other; and if it can appear that more was due, and due Proof is made thereof within one Month, then he ſhall pay this alſo; and the Submiſſion was, *ita quod Arbitrium fiat* before ſuch a Day, which was before the End of the Month; it ſeems that this is not a good Award. 1 *Rol. Abr.* 251.

11. There is a Diſtinction taken where the Arbitrators reſerve to themſelves a Power within their Time, and over a Matter ſubmitted, the Award is not final, and ſo void: But when the Power goes to a Matter not within the Submiſſion, the Power is void, and the Award good. *Palm.* 110.

12. There is likewiſe a Deverſity taken where the Arbitrator reſerves to himſelf a Power, after the Day allowed him to make his Award, to do a miniſterial, and where a judicial Act; the firſt is held to be good, but the latter is void. *Palm.* 146.

13. If the Award be, that one Party ſhall pay 105 *l.* at ſuch a Day; and if he does not pay it at the Day, that he ſhall pay at ſuch a Day after 110 *l.* this is a good Award, for it is but a Penalty for the Non-payment at the Day, which was all in the Power of the Arbitrators. 1 *Rol. Abr.* 250.

14. In like Manner has it been held a good Award, that one ſhall enjoy Lands for three Years, rendring to the other 5 *l.* yearly; provided that if he does not pay the ſaid Rent, that then the Award, as to the Enjoyment of the ſaid Lands, ſhall be void. *Cro. Jac.* 423.

15. If Two ſubmit themſelves to the Award of *J. S. Ita quod fiat* before *Michaelmas*, and the Arbitrators award that one ſhall pay 5 *l.* to the other for ten Load of Wood, and award ſeveral other Matters for other Things; and after this Award, if he that is to pay it, can diſprove, or better prove the Payment of any of the ſaid Sums before them, or any of them, before the ſaid Feaſt of *Michaelmas*, then ſo much as is proved ſhall not be paid at the ſaid Feaſt: This is a good Award, for the firſt Part is good; and ſo thereby the Authority of the Arbitrators ended; and then a Reference to Proof or Diſproof, is meerly void. Between *Beckwith* and *Warley*, *Hob.* 218.

16. As

16. As the Arbitrators have but a bare Authority, they cannot aſſign their Power to another; as if the Condition be to ſtand to the Award of *J. S.* and *J. D.* and they Award that the Party ſhall ſtand to the Award of *J. M.* this is not good. 1 *Rol. Abr.* 244.

17. And it is ſaid by *Hardres arguendo*, that if the Arbitrators award, that Lands in Debate ſhall be meaſured by others in their Preſence; that it is void in Law, becauſe they cannot give their Power to another. *Hard.* 45. But *quære* of this laſt Caſe; and *note*, that by the following Caſes there is a plain Deverſity where the Arbitrators award a miniſterial, and where a judicial Act to be done by a Stranger.

18. For where a miniſterial Act only is to be done by a Stranger, it is good; as if an Award be, that one ſhall pay 10*l.* to the other, and in Surety of Payment he ſhall be bound in an Obligation to the other, by the Advice of his Counſel; this is good; for it is incident and purſuant to the Submiſſion, that the Payment ſhould be made ſure, which is only a miniſterial Act in the Counſel. 1 *Rol. Abr.* 250.

19. If there be an Award that one Party ſhall pay 10*l.* to the other, and that the other ſhall make a general Releaſe, as fully and beneficially as Counſel ſhall adviſe; this is a good Award; for the Counſel hereby hath not any Power to do a judicial Act, but a miniſterial only: for the Arbitrators have directed the Extent of the Releaſe, *ſcilicet* to be general, and the Counſel is to make it as ſtrong in the Law as he can. Between *Cater* and *Startut*, *Style* 217.

20. An Award that one of the Parties ſhall pay ſuch Coſts as a Prothonotary ſhall tax, is good, and only a miniſterial Act in him. 1 *Sid.* 258.

21. An Award to pay 20 *l.* for a *Horſe*, if *J. S.* ſhall ſay it is worth ſo much, is ſaid to be good; and that a miniſterial Act only is referred to *J. S.* 2 *Rol. Rep.* 214. But in *Palm.* 147. the Reſolution is contrary, and there it is ſaid to be a judicial Act.

22. An Award that one of the Parties ſhall releaſe all Actions, *&c. ut talis adviſaret*, was adjudged void, becauſe a judicial Act was referred to be done. *Cro. Eliz.* 726.

23. An Award that one Party ſhall leave ſo many Trees for Houſe-bote, *&c.* as the Arbitrators, upon Advice with Counſel at the next Aſſizes, ſhould appoint, is not good. *Adjudged Cro. Jac.* 315.

SECT. III.

Revocation of their Power and Authority, and the Conſequence thereof.

1. IT is expreſly reſolved, that a Submiſſion to an Arbitration may be revoked, though made irrevocable by the ſtrongeſt Words, ſuch Authorities in their own Nature being revocable. *Vinyor's* Caſe, 8 *Co.* 81, 82.

2. But if the Submiſſion be by Bond, if the Party revokes, he forfeits his Obligation; he muſt likewiſe give Notice of the Revocation, for it is a Matter which the Party may take Iſſue upon; but if he who revoked pleads the Revocation, Notice ſhall be intended, for it is no Revocation without Notice; the Revocation muſt he in Writing, if the Submiſſion was by Bond. *Ibid.*

3. But if the Submiſſion be by *Parol*, the Party may revoke at Pleaſure, and he forfeits nothing; *ex nuda Submiſſione non oritur Actio*; but he muſt in

in this Caſe likewiſe give Notice of the Revocation, tho' it need not be in Writing, and the Notice muſt be to the Arbitrators themſelves. *Ibid.* 1 *Sid.* 281.

4. If the Submiſſion he made a Rule of Court, purſuant to the Act of Parliament, if either of the Parties revokes, the Court will grant an Attachment, though before that Statute it was doubted, whether the Court could grant an Attachment in ſuch Caſe, as appears by 1 *Sid.* 452, 453.

5. If a Feme Sole ſubmits to an Award, and before the Award made takes a Huſband, this is a Revocation of the Submiſſion. 1 *Jon.* 388.

SECT. IV.

Concerning the Umpire, and when his Authority commences.

1. AN Umpire is a Perſon appointed to determine the Matters in Controverſy, upon the Diſagreement of the Arbitrators; and he is ſometimes named in the Submiſſion by the Parties themſelves, and ſometimes the Arbitrators have Power to name him; he muſt regularly follow the ſame Directions in making his Umpirage, that the Arbitrators do in making their Award.

2. If two Men ſubmit themſelves for all Matters, *&c.* to the Award of certain Arbitrators, to be made before a certain Day; and if they do not make any Award before the Day, that then they ſubmit to the Ordinance and Judgment of *J. S.* If the Arbitrators make an Award of Part of the Things ſubmitted, and of Part not, the Umpire cannot make any Award of this Part of which the Arbitrators have made no Award; becauſe he hath

hath no Power given, but if the Arbitrators make no Award. 39 *H.* 6. 10.

3. But if the Submiſſion be, that if the Arbitrators make no Award of the Premiſſes, or of any Parcel thereof, that then the Umpire ſhall have Power to make an intire Award, or of the Parcel which remains, as the Caſe is; in this Caſe the Arbitrators may make an Award of Parcel, and the Umpire of the Reſidue, becauſe this is expreſly ordained. 39 *H.* 6. 11. *b.*

4. If the Condition of an Obligation be, that whereas *A.* and his Son, of the one Part, *&c.* have ſubmitted to the Award of *B.* and *C. ita quod, &c.* before the 1ſt of *May*; and if they make none, to the Award of ſuch Umpire as they ſhould chuſe, to be made before the 1ſt of *June*; and the Arbitrators make no Award, but chuſe an Umpire who makes an Award; but *quoad* the Son awards nothing; this is a void Award; for though the *Ita quod* be in the Clauſe referring to the Arbitrators, and the Award is made by the Umpire, yet the *Ita quod*, by Conſtruction, relates as well to the Umpire as Arbitrators. Between *Bean* and *Newbury*, adjudged. 1 *Lev.* 139.

5. But what is chiefly to be regarded with Reſpect to the Umpire is, that he commence upon his Office on a proper Time, that is, if he be to be named by the Arbitrators, that they do not appoint him till the Time allowed themſelves be expired; or if he be already named by the Parties, that he do not enter on his Office before the Time allowed the Arbitrators be expired, by Reaſon of the Inconvenience of having a concurrent Juriſdiction; and as this Matter has occaſioned ſome nice Reſolutions, as well as ſuch as are not eaſily to be reconciled, I have ſet down all the Caſes to be met with on this Subject.

6. If a Submiſſion be to the Award of certain Arbitrators, and if they cannot agree, or are not ready

ready to deliver thier Award in Writing before the 1ſt of *May*, then the Submiſſion is made to *J. S.* to be the Umpire, to be made before a certain Day after; if the Arbitrators do not treat of the Matter, ſo that there is no Diſagreement between them, yet if they do not make any Award before the Day, the Umpire may make an Award upon this Submiſſion, for the Words, *And if they cannot agree*, are not to be taken literally, but as if they had been, *if they do not agree upon any* Award. 1 *Rol. Abr.* 261.

7. If the Condition of an Obligation be, to ſtand to the Agreement or Award of *A.* and *B.* being Arbitrators choſen for what Purpoſe, to end a Controverſy between the ſaid Obligor and Obligee, and *J. S.* being Umpire for both Parties, *&c.* in this Caſe, if *A.* and *B.* who are the Arbitrators, make an Award without *J. S.* this is a good Award; for though the Words are in a Manner *Prima facie* uncertain, yet becauſe the common Uſage is to limit an Umpire to make an End, if the Arbitrators cannot, it ſhall be ſo interpreted; and that the Words *J. S. being Umpire*, ſhall be taken as an Affirmative *per ſe*, that he is an Umpire. 1 *Rol. Abr.* 261, 262.

8. But if a Submiſſion be to Four, and to the Umpirage of *J. S.* the Four and *J. S.* may join in making of an Award; otherwiſe if their Power had been divided in the Submiſſion; as if it had been to the Four, and if they could not agree, then to *J. S.* 1 *Bulſt.* 184.

9. If a Submiſſion be to ſtand to the Award of certain Arbitrators, and that if they diſagree, then to the Umpirage of *J. S. ita quod* the Award or Umpirage are made before the 1ſt of *May*; in this Caſe the Umpire cannot make any Award till a Diſagreement made by the Arbitrators; and the Arbitrators have Time to make the Award at any Time

Time before the ſaid Day; and ſo no Time is limited for the Umpire, and ſo his Power meerly void. 1 *Rol. Abr.* 261.

10. In Debt upon an Obligation, conditioned to perform an Award, ſo that it be made at or before the Feaſt of St. *Michael*; and if they made none, then to perform the Umpirage of *J. S.* ſo that it be made at or before the ſame Feaſt of St. *Michael:* The Defendant pleads, that the Arbitrators made no Award, and that the Umpire made no Umpirage: The Plaintiff replies, that the Arbitrators made no Award, but that the Umpire made an Umpirage; and ſets it forth, and aſſigns a Breach, to which the Defendant demurred; and it was held by *Kelynge*, *Twiſden*, and *Rainsford*, (*Moreton* doubting) that the Submiſſion to the Umpire was void; but if the Submiſſion had been to Arbitrators, and if they had made none, then to ſuch an Umpire as they ſhould name, it might have been good; for by their Election of an Umpire, they had waived the Submiſſion to themſelves; but as this Caſe is, if the Arbitrators had made one Award, and the Umpire another, which of them ſhould have been performed? Between *Copping* and *Hariard*, 1 *Lev.* 285.

11. In the ſame Caſe reported in 2 *Saund.* 132. it is held by all the Court (except *Twiſden*) that if the Plaintiff had averred, that the Arbitrators *non Potuerunt*, or that it was impoſſible, one of the Arbitrators dying, *&c.* or if he had ſhewed that they diſagreed, and declared they would meddle no more, the Award made by the Umpire had been good.

12. If the Condition of an Obligation be, to ſtand to the Award of *J. S.* and *J. D.* ſo as the Award be made and delivered to morrow; and if they cannot then agree, then to ſtand to the Umpirage of *J. N.* ſo he makes and delivers his Umpirage

pirage to morrow, or next Day after that; in this Caſe, though it be alledged that the Arbitrators could not agree upon any Award, and that they *Denegaſſent* and *deſeruiſſent* to make any Award; yet the Umpire cannot make his Umpirage upon the Morrow; for that although the Arbitrators could not agree, and though they have deſerted it, and denied, yet at any Time after, during the ſaid Day, they might have made an Award; and the Words are, *If they cannot theu agree*, by which is intended all the Day, till the laſt Moment thereof; and this is a Condition precedent to the Power of the Umpire, which extends to all the Day; and no Act of the Arbitrators can haſten this beyond the Power; and if the Arbitrators and Umpire ſhould have Power at the ſame Time, and both ſhould make two ſeveral Awards, this would bring great Doubt and Confuſion to the Court, which of them would be good. 1 *Rol. Abr.* 262.

13. But in 2 *Jones* 168. the ſame Point coming in Queſtion, the Court there held, that if the Arbitrators, upon ſuch Submiſſion, make an Award, it ſhall be good; but if not, then the Award of the Umpire ſhall ſtand, and there is no Confuſion in the Concurrence of Authority; for the Umpire hath not an abſolute concurring Authority, but conditionally only, if the Arbitrators do not make an Award.

14. But by the above Caſes, and by the expreſs Authority of my Lord *Holt*, who ſays poſitively in 1 *Salk.* 72. that if the Umpire be named in the Submiſſion, he cannot make his Umpirage before the Time given to the Arbitrators to make their Award in be expired; it ſeems the better Opinion, that the Umpire can have no Power till the Time allowed the Arbitrators be expired, eſpecially if he be named in the Submiſſion by the Parties; but if

the Arbitrators have Power to name him, it may be otherwiſe, as appears by the following Caſes.

15. If Two ſubmit themſelves to Two others, with a Clauſe, nevertheleſs if they do not end it within ten Days, they ſhall nominate another that ſhall end it within the ten Days; by which they appoint another, who makes an Award within the ten Days; this is good, becauſe it is the Appointment of the Parties, and their ſpecial Agreement; and by making the Umpire, the Authority of the Arbitrators determines. *Godb.* 241. *S. P.* agreed by the whole Court. 1 *Sid.* 428.

16. If *A.* and *B.* ſubmit themſelves, by Condition of an Obligation, to the Award of *J. S. ita quod* the Award be made *ſuper* or before the laſt Day of *May* next enſuing; and if he does not make any Award *ſuper* or before the ſaid laſt Day of *May*; then if they ſtand to the Award of ſuch Perſon, who ſhall be elected by the Arbitrator to be Umpire, to be made before the tenth Day of *June* after; in this Caſe, if the laſt Day of *May* the Arbitrator, not having made any Award, elects an Umpire, who makes his Umpirage before the tenth Day of *June*, this is a good Umpirage; for though the Arbitrator had all the laſt Day of *May* to make his Award; yet he might the ſame Day elect an Umpire, when he perceived that he could not make any Award himſelf; and when it appears after that he relinquiſhed, and did not make any Award after naming the Umpire. 1 *Rol. Abr.* 262. *S. P.* adjudged, *Cro. Car.* 263. and the ſame Point cited, and agreed by the Court. 2 *Saund.* 133.

17. The ſame Point is likewiſe reſolved in *Raym.* 206. and by two Judges it is there held, that notwithſtanding the Umpire cannot make his Umpirage the ſaid laſt Day of *May*, for the Power of the Arbitrator is not extinguiſhed by his chuſing an Umpire. 1 *Lutw.* 544. S. P.

18. A

18. A Submiſſion was to two, ſo as they made their Award on or before the 29th of *June*; and if they made no Award, chuſe an Umpire; they choſe an Umpire on the 29th; and Exception was taken that they had the whole 29th to make their Award. *Et per Holt*, Chief Juſtice, if there be a Submiſſion to two, ſo as they make their Award before *Midſummer*, and if they cannot agree, then to ſuch Umpire as they ſhall chuſe, ſo as he make his Umpirage before *Midſummer*, and an Umpire is choſe accordingly; this is good, and ſo will his Umpirage be, if made; becauſe the Arbitrators had determined their Power before, by chuſing an Umpire. But he ſaid, that if the Umpire be named in the Submiſſion, he cannot make his Umpirage before the Time given the Arbitrators to make their Award in be expired. Between *Mitchell* and *Harris*, 1 *Salk.* 71.

19. But my Lord *Holt* ſeems to be of another Opinion in the Caſe of *Reynolds* and *Gray*, 1 *Salk.* 70. where he expreſly ſays, That if Arbitrators chuſe an Umpire before the Time allowed them is expired, 'tis *ipſo facto* void, though they abſolutely reſolve to make no Award themſelves. 12 Mod. 120. Lord Raym. 222. 2 Barnard. B. R. 154.

20. And there is a Caſe which ſeems to favour this laſt Opinion; where in Debt upon a Bond to perform an Award, ſo that it be made before or upon the 22d Day of *December*, or to chooſe an Umpire upon a Breach aſſigned, an Exception was taken that there was no good Award, becauſe the Arbitrators were to make it before or upon the 22d Day of *December*; and if they could not agree, to chooſe an Umpire, and the Award ſet forth was made by an Umpire choſen after the 22d Day of *December*, which the Arbitrators had not Power by the Submiſſion to chooſe; *ſed non allocatur*, becauſe they might have made their Award upon the 22d Day of *December*, and therefore could not chooſe

an

an Umpire till afterwards, for their Power was determined only as to the making an Award. Between *Adams* and *Adams*, 2 *Mod.* 168.

21. If the Condition of an Obligation be to ſtand to the Award of *A.* and *B.* ſo as the ſaid Award be made before ſuch a Day, and if they make no Award then to ſtand to the Award of ſuch Umpire as the ſaid *A.* and *B.* ſhall nominate, ſo as the ſaid Umpire do make his Umpirage before another Day, and the Arbitrators before the firſt Day make no Award, but afterwards name *C.* to be Umpire, who thereupon immediately refuſes, and the Arbitrators afterwards nominate *D.* who before the laſt Day makes an Award; this is a good Award; for the Nomination of *C.* to be Umpire, did not make him ſo, but when he refuſed, it amounted to no more than a bare Propoſal to him; and the Form of Pleading always is *ſuſcepto ſuper ſe onere Arbitri*, ſo that it is the Acceptance makes him Umpire. *Hill.* 1 *&* 2 *Will. & Mar.* between *Tryppit* and *Eyres*, 2 *Vent.* 113, 114. Adjudged by *Powel*, *Rokeby* and *Ventris*, *contra Polexfin*, Chief Juſtice; who held, that *C.* might have proceeded notwithſtanding his Refuſal, and there could not be two concurrent Jurisdictions in ſeveral Perſons. But ſee the following Caſe, which ſeem *contra.*

22. A Motion was made for an Attachment, for not performing an Umpirage of *H.* choſen by Arbitrators, who were appointed by Rule of Court; and it was held by *Holt*, Chief Juſtice, That if Arbitrators chuſe an Umpire before the Time allowed them for their Award is expired, 'tis *ipſo facto* void, though they abſolutely reſolve to make no Award themſelves; and that when their Time is expired, if the Arbitrators chuſe one, their Authority is executed, and they cannot revoke or chuſe again, though the Perſon elect refuſe to accept; *aliter*, if they chuſe their Umpire upon Condition

Condition that he does accept the Umpirage, for then he is not Umpire unleſs he does accept it: But *Rookeſby* doubted whether an expreſs Condition would make a Difference, becauſe it ſeemed to be implied. 1 *Salk.* 70.

Submiſſion to two and an Umpire in caſe they ſhould differ, the Arbitrators meet, and one of them declared himſelf not clear, the other was for the Appellant, upon which the Umpire made his Award. The Queſtion was whether the Umpire had any Power in this Cauſe, for it was not come to him till the Arbitrators differed, which they had not yet, and might ſtill make their Award; but the Objection was over-ruled. 3 *Vin. Abr.* 97. *pl.* 17.

It is ſettled that Arbitrators cannot proceed on a Reference, after they have once named an Umpire, for then their Authority ceaſes, tho' the Time for making the Award is not expired. *Rep. of Practice in C. B.* 116.

CHAP. VI.

Of the Award.

AN Award or Arbitrament is the Sentence or the Decree pronounced by the Arbitrators, and publiſhed when they have heard all Parties.

There are five Things incident to every Award or Arbitrament, *viz.* 1. Matter of Submiſſion. 2. The Submiſſion. 3. Parties to the Submiſſion. 4. The Arbitrators. 5. The Making and Delivery of the Award. And though we have treated of

the four first of these in the foregoing Chapters, yet as there are many Things relating to them which interfere with the Award, and for whinch the Award has been held void, it was necessary, for Method sake, to reserve them for this Chapter, that by ranging them under the following *Sections*, any Person may the more readily find for what Causes Awards have been held void, and what Exceptions have been taken, though disallowed.

And as our Courts have lately been more liberal in their Constructions of Awards, in expounding them according to the Intent of the Arbitrators, than formerly, I have, as near as possible, set down the Cases according to the Series of Time in which they were resolved.

Sect. I. Awards must be made according to the Submission, with respect to the Things submitted.

Sect. II. Awards must be made according to the Submission, with respect to the Persons.

Sect. III. Awards must be made according to the Submission, with respect to the Making, Signing and Sealing, Delivering, and other Circumstances.

Sect. IV. An Award ought to be certain.

Sect. V. That it be final, so as to make an End of the Matters in Controversy.

Sect. VI. An Award must appoint the doing of something Beneficial to each Party.

Sect. VII. The Thing awarded to be done, must be reasonable, possible and lawful.

Sect. VIII. Awards void in Part, and good for the rest, and void in Part, void for the Whole.

Sect. IX. Concerning the Performance of the Award.

Sect. X. Precedents of different Kinds of Awards.

SECT. I.

Awards must be made according to the Submission, with respect to the Things submitted.

1. IT was always a Rule to expound Awards according to the Intent of the Arbitrators, and and not literally. 10 *Co.* 57.

2. But though this Rule seems to be as well established as any relating to Awards, yet great Difficulties and Doubts have arisen upon finding out the Intent of the Arbitrators; and in former Times it was held to be strictly necessary, that the Words of the Arbitrators be consonant to Law; that is, with respect to the Award and Submission, that 21 E. 4. 39. *b.*

neither the Matter nor Words in the one differ from thoſe in the other.

3. And it hath been reſolved, that an Averment ſhall not be allowed to ſhew the Intent of the Arbitrators, if it be not expreſſed in the Award, either directly or by Words tantamount. *Dyer* 242.

4. But in latter Times I cannot find that our Courts have been ſo ſtrict in tying up the Arbitrators, and obliging them in all Particulars to make the Award agree with the Submiſſion; on the contrary, the Tenor of our more modern Reſolutions ſhew, that an Agreement in Subſtance is ſufficient; and ſo far are the Niceties and Difficulties, which attended this Matter remedied, that it is now a ſtated Rule, *That in all Awards that are ſaid to be* de & ſup. Præmiſſ. *that if the Words uſed in them be in their own Nature more comprehenſive, and ſo extenſive to Things not within the Submiſſion, yet they ſhall be intended that there was no other Matter between the Parties for them to lay hold on, but what was ſubmitted, if the contrary be not ſhewn. So* e converſo, *if the Words are more narrow, and leſs comprehenſive, than to take in all the Matter of Submiſſion, yet it ſhall be intended that no more was in Controverſy, than what the Words naturally comprehend, if the contrary be not likewiſe ſhewn.*

5. If the Condition of an Obligation be, to perform an Award between the Parties of ſuch and ſuch Things, if the Arbitrators award a Thing to be done meerly out of the Submiſſion, he is not bound to perform it. 8 *H.* 6. 18.

6. If one be choſen to make an Award upon one Thing, and he makes it upon another, the Arbitrament is void; as if the Submiſſion be of all Things in Variance betwixt the Parties, and the Award is of Things not in Variance. *Plow.* 396.

If the Submiſſion be of the Right and Intereſt of the Land, and the Award is concerning the

Profits only of the Land; or if the Submiſſion be of the Manor of *D.* and the Award is made of the Manor of *S.* it is not good. *Dyer* 242.

7. If the Submiſſion be of all Actions, the Arbitrators cannot make an Award of ſuch Things of which the Parties have only Cauſe of Action, becauſe it is not within the Submiſſion. 36 *H.* 6. 11. *b. Co. Lit.* 285.

8. But it is otherwiſe if the Submiſſion is of all Actions and Quarrels. *Ibidem.*

9. The moſt general and extenſive Word which can be uſed, is the Word *Demands*; therefore if there is a Submiſſion of all Demands, the Arbitrators may make an Award of all Matters concerning the Title of Land, *&c. Keilw.* 99.

10. Upon a Submiſſion of all *Differences* only, or of all *Injuries*, *Quære* of what Things may the Arbitrators make their Award; and ſee *Style* 170. 3 *Bulſt.* 311.

11. There was a Submiſſion to Arbitrament by the Huſband, for all Controverſies concerning Money laid out for the Wife, *at her Requeſt*, and the Arbitrators awarded, That the Huſband ſhall pay 340 *l.* for all Sums laid out for the *Feme*, (omitting at her Requeſt), and the Court held, that this being for more than was ſubmitted, that the Award was void. Between *Waters* and *Bridges*, *Cro. Jac.* 639, 640.

12. If there be a Controverſy between the Parſon and Pariſhioners, whether Tithes ſhould be paid in *Specie* or not, and they reciting the ſaid Controverſy, ſubmit themſelves to the Award of *J. S.* for all Matters, as well Spiritual as Temporal, from the Beginning of the World to the preſent Day; and the Arbitrator awards, That the Parſon ſhall have 7 *l.* for the Tithes due before the Submiſſion, and that the Pariſhioners ſhall pay 4 *l. per Annum* for the Tithes which ſhall grow due after; this is a

good Award; for the Right of the Tithes was in Queſtion, and by theſe Words ſubmitted to Arbitrament, as well as the Poſſeſſion of them. 1 *Rol. Abr.* 246.

13. If *A.* and *B.* ſubmit themſelves to the Award of *J. S.* touching a Suit depending between them in an *Ejectione Firmæ*, *J. S.* upon this Submiſſion, cannot make an Award of the Land for which the Action is brought. 1 *Rol. Abr.* 246.

14. If the Submiſſion be of a Term for Years, and all thereupon depending, and the Award is, That one ſhall pay to the other 10 *l.* for the Rent that ſhall become due upon this Term at *Michaelmas* next enſuing; this is no good Award, for the Rent is not within the Submiſſion, in as much as the Rent may be extinct by Surrender, Eviction, *&c.* before *Michaelmas.* 1 *Rol. Abr.* 242. *Pl.* 3. 10 *Jac.* 1.

15. But if the Condition of an Obligation be, to ſtand to the Award of *J. S.* and he awards, That one ſhall enjoy a certain Houſe, paying to the other 20 *l.* yearly, if the Rent is not paid, the Condition is broke. *Cro. Eliz.* 211. *Trin.* 32 *Eliz.*

16. So if an Award be, that *A.* ſhall make a Leaſe to *B.* and that for this Leaſe *B.* ſhall pay to *A.* a certain Sum yearly; this is a good Award. *Moor* 3. *Pl.* 8.

Note, That from the above Caſes it appears, that regularly the Award muſt agree in all Inſtances with the Submiſſion, with reſpect to the Things ſubmitted, eſpecially if there be Mention made of the Matters in Controverſy, and the Submiſſion be conditional, or ſo that it be made of all the Premiſſes; for where in ſuch a Submiſſion a Matter is particularly mentioned, it muſt be particularly determined. *Vide Hard.* 45. and *vide Sect.* 9. of this Chapter, where

where Awards may be void for Part, and good for the reſt.

And though it be held neceſſary in moſt Caſes, that Things particularly mentioned, ſhould be particularly determined, and that no Award ſhould be made of Things not mentioned in the Submiſſion; yet the Arbitrators may make an Award of Things which depend on the Principal, that is, of ſuch Things which have a Relation or Dependance on the Things contained in the Submiſſion, though not expreſſed therein.

17. As if the Submiſſion be of the Title and Poſſeſſion of Land, the Arbitrators may make an Award of the Evidences and Charters concerning the Land. 8 *H.* 6. 18. *b.*

18. So if there be a Submiſſion of all Debts, the Arbitrators may award a Releaſe of all Bonds, Judgments, Executions and Extents; for, as by the Submiſſion the Arbitrators have Power to make an Award concerning the Debts themſelves, ſo *ex conſequenti* they have Power to award a Releaſe of the Specialties, Judgments, *&c.* by which the ſaid Debts are due. *Trin.* 22 *Car.* 2. between *Roberts* and *Marriot*, 2 *Sand.* 190.

And in the following Caſes, though the Rule was admitted, *That the Award ſhould be made according to the Submiſſion, with reſpect to the Things ſubmitted*; yet the Awards made in them have been by Conſtruction held to be good.

19. As, if the Submiſſion be of all Matters between the Parties, and the Award is made of all *præter* one Obligation, and of this the Award is, that it ſhall ſtand, this is a good Award of all, for he is not bound to diſcharge this without Cauſe, and it ſhall be intended there was no Cauſe. *Hill.* 14 *Jac.* 1. between *Berry* and *Penrin*, in *Cam' Scac' Cro. Jac.* 400.

20. If *A.* and *B.* ſubmit all Controverſies of Wood and Underwoods, and all Quarrels and Suits between them, *ita quod*, *&c.* and the Award is, That *A.* ſhall have the Underwoods, and that he ſhall pay to *B.* 50 *l.* and ſays nothing of the Woods, but awards further, that all Manner of Actions, Quarrels, *&c.* between them, ſhall ceaſe; this is a good Award of all, becauſe the Beginning of the Award was *We do award of the Premiſſes*, and alſo the Award is of Actions, *&c. Mich.* 5 *Jac.* 1. between *Humfry* and *Wiburn*, 1 *Rol. Abr.* 257.

21. If a Submiſſion be of all Controverſies, Doubts, *&c.* had, made, moved or ſtirred between the Parties, from the Beginning of the World until the Day of the Date of the Bond, and the Arbitrators award that one ſhall pay 10 *l.* to the other, which appears, by his Confeſſion, that he hath received; and if it ſhall appear within one Month, and due Proof thereof ſhall be made, that he hath received more than this, which he hath ſo confeſſed, then he ſhall pay that alſo; though this laſt Part be void, yet the Award is good; though it was objected, that all Doubts are referred, and the Condition is *ita quod fiat de Præmiſſis*, and ſo they have not made an end of all Doubts; for it appears, that the Arbitrators doubted of this, whether more was due or not: But *per Cur'* adjudged good, becauſe it is not averred that this was a Doubt moved or ſtirred between the Parties at the Time of the Submiſſion; for perhaps this Doubt aroſe between the Arbitrators after the Submiſſion, and it ſhall not be intended without an Averment, that this was a Doubt at the Time of the Submiſſion; and this was made *in majorem Cautelam* by the Arbitrators. 9 *Car.* 1. 1 *Rol. Abr.* 257.

22. If the Arbitrators reciting, That whereas there were ſeveral Differences between the Plaintiff and the Defendant, concerning a Houſe and divers Elms,

Elms, and Arrears of Rent; they, to make a final End of all, award the Defendant to pay to the Plaintiff 4 *l.* for all the ſaid Arrears of Rent; this is a good Award; for either it ſhall be intended that the other Matters were otherwiſe determined, or, when the Award ſays, to end all Differences, it ſhall be intended that the 4 *l.* was given in Satisfaction of all. Between *Hopper* and *Hachet*, 16 *Car.* 2. 1 *Lev.* 133. See *Hard.* 399. where this Point is doubted.

23. If two ſubmit all Controverſies the 4th of *May*, to the Award of *J. S. ita quod Arbitrium fiat de Præmiſſis*, and *J. S.* makes an Award *de Præmiſſis* of all Controverſies till the 1ſt of *May*, though here he hath not made any Award for Part of the Time ſubmitted, but the Award is ſhorter, yet becauſe it is made *de Præmiſſis*, it ſhall not be intended that there were any mean Controverſies between them, between the 1ſt of *May* and the 4th of *May*, unleſs this be ſhewn of the other Part, and therefore the Award is good enough. 1 *Rol. Abr.* 257.

It was held formerly, that the Awarding a Thing not mentioned in the Submiſſion, in Satisfaction of a Treſpaſs, *&c.* ſubmitted, was not good.

24. As where an Award was, That one ſhould give his Horſe in Satisfaction, *&c.* it was held, that the Party was not bound to perform it, becauſe it was out of the Submiſſion, for he may as well award him to give his Gown, or other collateral Matter; but Money is *Menſura rerum*, and therefore may be awarded to be paid in Satisfaction of any Thing. 9 *E.* 4. 44.

25. If two ſubmit to the Award of *J. S.* of all Matters between them till the Submiſſion, and then each of them promiſes the other to perform the Award, and *J. S.* awards, Whereas one was bound in an Obligation to the other (which was made after the Submiſſion, and before the Award) that the Obligee

Obligee ſhould deliver up the Obligation to the other, in full Satisfaction of all Matters between them, (and awards further in ſuch Manner, that all was good, if the aforeſaid Award was good), though this Obligation be out of the Submiſſion, yet he is bound to perform it, becauſe it is to be given in Satisfaction of Matters contained within the Submiſſion; as a Horſe or Money may be given in Satisfaction, though they are not within the Submiſſion: Adjudged 15 *Jac.* 1. 1 *Rol. Abr.* 243. but the *Reporter* makes a *Quære* of this, and ſays, That this is a Thing in Action between them, and out of the Submiſſion, and ſo not like the Caſe of the Horſe, unleſs the Horſe was in Diſpute between them after the Submiſſion.

26. There are Variety of Caſes in the old Books, where it has been held, that an Award of a collateral Thing in Satisfaction is not good, but the Reaſon in thoſe Caſes, is not becauſe the Thing awarded was not mentioned in the Submiſſion, (for of this there is no Doubt now), but becauſe the Party had no Remedy to enforce the Performance of the Award; neither could the Defendant plead it barely to any Action brought, without pleading a Performance likewiſe. 17 *E.* 4. 8. *a. Keilw.* 121. 9 *Co.* 79.

27. But the Law ſeems to be held otherwiſe now, and that an Arbitrament is a good Plea, whether it be of Money, or a collateral Thing, as a Hat or a Horſe; and the Reaſon is becauſe the Submiſſion is a mutual Promiſe, upon which an Action lies; and Performance need not be averred in either Caſe, for the Remedy is alike, as appears by the following Caſe.

28. The Plaintiff brought an Action of Treſpaſs for an Aſſault, Battery and Wounding; and the Defendant, as to the *Vi & Armis*, pleads Not guilty, and as to the Reſidue pleads an Award made, *viz.*

That the Defendant ſhould provide *two Fowls* at his Manſion-Houſe in *Old Bedlam* in *London*, to be eat by the Plaintiff and his Friends, *&c.* in Satisfaction of the ſaid Treſpaſs, *&c.* And it was objected, among other Things, That this was not a good Bar without Execution, becauſe it was of a collateral Thing, of which the Plaintiff could not have an Action; yet the Court held, that as a Submiſſion mutual, though not by Bond, was of late reſolved to be an actual Promiſe of Performance, it need not be averred executed, becauſe the Party had a Remedy for the Thing awarded; and the Plea was held good. Between *Boiſloe* and *Baily*, *Trin.* 3 *Ann.* 6 *Mod.* 221, 222. 1 *Salk.* 76. S. C. where it is ſaid, that *Powel*, Juſtice, was of a contrary Opinion. *See* the laſt Section of this Chapter.

Awarding the *giving a Note*, is the ſame as awarding the Payment of Money at a future Day, and is within the Submiſſion. 2 *Stra.* 1082. *Andr.* 28.

SECT. II.

Awards muſt be made according to the Submiſſion, with reſpect to the Perſons.

AS by the foregoing Section it appears, that it is regularly neceſſary that the Award ſhould be made according to the Submiſſion, with reſpect to the Things ſubmitted; ſo in this Section it will appear to be neceſſary, that the Award be made according to the Submiſſion, with reſpect to the Perſons any way concerned; and herein it will be moſt proper, for Method ſake, to conſider:

I. The

I. The Persons actually named in the Submission, and how the Award is to be made as to them.

II. When Copartners and others submit, not only for themselves, but likewise for others, or for others barely, how the Award is to be made.

III. How far an Award, which appoints the doing of a Thing by a Stranger, or a Person not named in the Submission, is good or not.

IV. How far an Award, which appoints the doing of a Thing to a Stranger, be good or not.

V. How the Award must be made according to the Submission, where there are several Arbitrators.

1st, *As to the Persons actually named in the Submission, and how the Award is to be made as to them.*

1. IF three Persons, *scilicet A. B.* and *C.* of the one Part, and *D.* of the other Part, submit themselves to the Award of *J. S. Ita quod, &c.* and he makes an Award between *A.* and *B.* of the one Part, and *D.* of the other Part, and makes no Award between *C.* and *D.* this is not good, because the

the Submiſſion is conditional, and it is recited in the Submiſſion, that there were divers Controverſies between them all. 14 *Car.* 1. 1 *Rol. Abr.* 261.

2. But if *A.* and *B.* of the one Part, and *C.* of the other Part, ſubmit themſelves to the Award of *J. S.* of all Matters between them, *J. S.* may make an Award of any Matter between *A.* only and *C.* though *B.* hath nothing to do therewith, for the Submiſſion ſhall be taken diſtributively. 9 *Car.* 1. 1 *Rol. Abr.* 246. But *Note*, That it does not appear that the Submiſſion was conditional in this Caſe, as it was in the precedent.

Submiſſion by Rule of Court was, of all Matters in Difference between *A.* of the one Part, and *B.* and *C.* of the other Part, (without ſaying between them and either of them), an Award that *C.* ſhould pay ſo much due by him to *A.* is good; for ſuch Submiſſion imports all Matters that either had againſt the other jointly or ſeverally. *Comyns's Rep.* 547. *pl.* 225.

3. If *A.* and *B.* of the one Part, and *C.* of the other Part, ſubmit to the Award of *J. S.* who awards that *B.* ſhall pay a certain Sum of Money unto *C.* in Satisfaction of all Differences between *A.* and *B.* of the one Part, and *C.* of the other Part; this is a void Award as to *A.* and he is not concerned therein, for the Money paid by one can be no Satisfaction for the other. *Mich.* 1655. between *Morden* and *Hart*, *Style* 471.

4. In Debt upon an Obligation conditioned, That whereas the Defendant, by himſelf and his Son, had ſubmitted to the Award of *A. B.* to perform it, ſo that the Award be ready, *&c.* before the 1ſt of *May*, and if they made none, to ſuch Umpire as they ſhould chuſe to be made the firſt of *June*, the Defendant Pleads no Award nor Umpirage; the Plaintiff confeſſes no Award by the Arbitrators, but ſays, That the Umpire awarded

the

the Plaintiff to ſeal to the Defendant three Obligations, and the Defendant to pay to the Plaintiff 100 *l.* which he had not done; upon a Demurrer, one of the Exceptions (and for which the Award was held void) was, That nothing is awarded as to the Son, and it ought to be to every one for ſome Part, or elſe 'tis void in the Whole. *Mich.* 16 *Car.* 2. between *Bean* and *Newbury*, 1 *Lev.* 139, 140.

5. But it is clear, that if there be three or more Parties, and the Submiſſion is, ſo that the Award be made between them, or any of them, the Arbitrators may make an Award between any two of them, without mentioning any Thing concerning the others. See 10 *Co. Oſborne*'s Caſe.

6. So where the Defendant and his Wife ſubmitted on one Part, and the Plaintiff on the other, *ſo that the Award be made betwixt them, or any of them*, it was held, That the Award made in this Caſe was good, tho' no Mention was made at all of the Wife. *Hard.* 399.

7. If the Father and Son (the Son being an Infant) ſubmit to an Award (admitting the Submiſſion of an Infant, or of his Father on his Behalf, is void) yet the Submiſſion *quoad* the Father is good, and the Arbitrators may make an Award *quoad* him and the other Party alone. 3 *Lev.* 17.

8. A Demand as *Executrix* is within the general Submiſſion to an Award. 2 *Stra.* 1144.

2dly, *When Copartners and others ſubmit, not only for themſelves, but likewiſe for others, or for others barely, how the Award is to be made.*

1. Though one Perſon may ſubmit for another, or one Copartner may (as is frequent) ſubmit for himſelf and other Copartners, yet Care muſt be taken how the Submiſſion, as well as the Award, be made, as appears by the following Caſes.

2. If

2. If *A.* and *B.* ſubmit to the Award of *J. S.* concerning all Differences between the ſaid Parties, and *J. S.* makes an Award between *A.* in the Name, and for the Behalf of *C.* of the one Part, and *B.* of the other Part, *viz.* that *B.* ſhall, *&c.* this is a void Award, becauſe contrary to the Submiſſion. *N. Bendl.* 107.

3. If *A.* and *B.* Merchants of a Ship, of the one Part, and *C.* and *D.* Part-Owners and Mariners of the Ship, of the other Part, ſubmit to the Award of *J. S.* of all Matters concerning a Prize taken by Repriſal, and *A.* and *B.* enter into an Obligation to perform the Award, and *J. S.* awards, That *A.* and *B.* the Merchants, ſhall pay 1000 *l.* to *C.* and *D.* for the Uſe of them and the Reſidue of the Part-Owners and Mariners; this is a good Award; for if *A.* and *B.* do not pay the Money, the Part-Owners and Mariners may have an Action of Debt againſt them, in as much as all have ſubmitted to the Award; and if they pay the Money to *C.* and *D.* to the Uſe of them and the Reſidue of the Part-Owners and Mariners, tho' it be not limited how much each one ſhall have, yet in as much as they have jointly ſubmitted, it may be jointly awarded to be paid to them; and though it be to be paid to *C.* and *D.* for the Uſe of them and the Reſidue of the Part-Owners and Mariners, and though it was objected, That the Reſidue of the Part-Owners and Marines had no Remedy for their Part but by Action; yet this is a good Award, for it is a good Award, to award that one ſhall enter into an Obligation to pay a Sum, which is but a Thing in Action; and the reſt of the Part-Owners and Mariners may have Remedy, at leaſt in Chancery, againſt *C.* and *D.* if not at Common Law. Between *Wood, &c.* and *Thompſon, &c. Mich.* 24 *Car.* 1. 1 *Rol. Abr.* 249.

4. If one Partner, on the Behalf of himſelf and the other Partner, ſubmits, *&c.* and Promiſes

to

to perform the Award, and thereupon the Arbitrator awards them to pay Money, though the other Partner is not bound hereby; yet he that ſubmitted, &c. for himſelf and his Partner, muſt perform it. 2 *Mod.* 227, 228.

5. If there be a Controverſy for a certain Thing between *A.* and *B.* of the one Part, and *C. D.* and *E.* of the other Part; and *C.* in Conſideration of 6*d.* given him by *A.* and *B.* ſubmits the Matter for himſelf and *D.* and *E.* and aſſumes to ſtand to the Award; and *A.* and *B.* ſubmit of the other Part; and the Arbitrators award that *C.* ſhall pay ſo much to *A.* and *B.* in Satisfaction of the Controverſy; this is a good Award, and *C.* is bound to perform it, though it concerns Two, Strangers to the Submiſſion, for *C.* hath undertaken for them. *Hill.* 14 *Jac.* 1. between *Bullock* and *Dalby*, 1 *Rol. Abr.* 244.

As there may be ſeveral Parties to an Arbitration, ſo they may be jointly bound, though in ſeveral Bonds, as appears by the following Caſe.

6. As, if there be a Controverſy concerning certain Lands, between *A. B.* and *C.* and thereupon *A.* of the one Part, and *B.* and *C.* of the other Part, ſubmit to the Award of *J. S.* and thereupon *A.* binds himſelf in an Obligation of 1000 *l.* to *B.* and *C.* with Condition to perform the ſaid Award of *J. S.* touching this; and *B.* and *C.* becauſe they would not be bound the one for the other, enter into ſeveral Obligations of 1000 *l.* a-piece to *A.* with ſeveral Conditions, for the Performance of the Award of the ſaid *J. S.* and the Arbitrators award that *A.* ſhall make a Releaſe of all his Right in the Land to *B.* and *C.* and in Conſideration thereof *B.* and *C.* ſhould pay 300 *l.* to *A.* in an Action of Debt by *A.* againſt *B.* upon his Obligation for Non-performance of the Award; this is a good Award; and Breach aſſigned, that *nec* B. *nec* C. paid

paid the 300 *l.* at the Time appointed, according to the Award; all this Matter being diſcloſed in Pleading; for upon all the Matter ſhewn it appears, that *C.* is no Stranger to the Award; for he and *B.* ſubmitted themſelves jointly; and though they entred into ſeveral Obligations, yet this did not make *C.* any Stranger to the Award. Between *Hais Hais*, *Cro. Car.* 433.

And *note*, That when ever one Perſon ſubmits for another, it muſt carefully be obſerved, that whatever is awarded to be done, muſt appear to be for the Advantage of the Perſon for whoſe Account the Submiſſion was.

As upon a Submiſſion by *A.* for himſelf on the one Part, and *B.* of the other, on the Behalf of *C.* the Arbitrators awarded, that *B.* on the Behalf of *C.* ſhould pay unto *A.* 300 *l.* and that *A.* ſhould execute a general Releaſe unto *B.* and it was held, that this Award was void, becauſe there was nothing awarded on the Part of *C.* who was the Principal Perſon concerned, for the Differences were between him and *A.* and therefore the Awarding that *A.* ſhall releaſe to *B.* ſignified nothing, for *C.* will, notwithſtanding ſuch Releaſe, continue liable to the Demands of *A. Trin.* 9 *W.* 3. between *Bacon* and *Dubarry*, *Carth.* 412.

3dly, *How far an Award, which appoints the doing of a Thing by a Stranger, or a Perſon not named in the Submiſſion, is good, or not.*

1. We find it often ſaid in our Books, that where an Award appoints a Thing to be done by a Perſon who is a *Stranger* to the Submiſſion, that the Award is void; tho' this be regularly true, yet it has been held to be no otherwiſe ſo than with this Diſtinction, *viz.* where the Party has no Remedy to compel the Stranger, or where the Stranger is to

do a judicial and not a miniſterial Act; for in both the laſt Inſtances, the Awards made, and appointing a Thing to be done by a Stranger, have been held good, as appears by ſeveral Caſes.

2. If the Arbitrators award, that one of the Parties ſhall procure a Stranger to do a Thing, and he hath no Means by Law to compel the Stranger to do it, the Award is void; but if he hath any Means to compel the Stranger to do it, either by the Common Law, or in Chancery, he is bound hereby. 17 *E.* 4. 5.

3. If the Condition be to ſtand to the Award, *&c.* and the Award is, that one ſhall pay 15 *l.* to the other, and *J. S.* a Stranger, ſhall enter into an Obligation to pay it at a certain Day; this Award is void as to the Entry into an Obligation by a Stranger, and the Obligor is not bound to perform it, becauſe it is out of the Submiſſion, and the Party cannot by Intendment procure *J. S.* to enter into ſuch an Obligation. Between *Moor* and *Beedle*, 10 *Co.* 131.

4. If a Submiſſion be touching a Title of Land between *A.* and *B.* and the Arbitrators award that *A.* and his Wife, and Son and Heir apparent, by the Procurement of *A.* ſhall paſs ſuch Aſſurance of the Land to *B.* as *B.* ſhall require, this is a void Award as to the Wife and Son, becauſe they are Strangers to the Award. Between *Barney* and *Fairchild*, 13 *Car.* 1. 1 *Rol. Abr.* 248.

5. If there be an Award that one ſhall acquit the other of an Obligation of 200 *l.* in which they are bound to *B.* for Payment of 105 *l.* this is a good Award; for though he cannot compel *B.* being a Stranger, to deliver up the Obligation, or to make a Releaſe by the Common Law; yet if the Obligation was not forfeited, he might pay the 105 *l.* to *B.* at the Day, and this would acquit the other; and if the Obligation was forfeited, yet he might

pay

pay the Penalty to *B.* and ſo acquit the other; or he might on Satisfaction given compel *B.* in a Court of Equity, to deliver up the Obligation, or to make a Releaſe. 15 *Car.* 1. between *Barſey* and *Clipſham*, 1 *Rol. Abr.* 242.

But *note*, That though regularly that Part of the Award, which appoints a Thing to be done by a Stranger, and for which the Party has no Remedy to compel him, be void, yet it ſhall he good as to himſelf.

6. As if the Condition of an Obligation be, to perform an Award, and the Award is, that the Obligor and a Stranger ſhall pay to the other Party 10 *l.* though this is void as to the Stranger, yet it is good as to the Obligor, and he is bound to perform it. Between *Gray* and *Wicker*, 1 *Rol. Abr.* 244.

7. If in Debt upon an Obligation, conditioned for the Performance of an Award, the Defendant ſhews, that the Arbitrators did make an Award, that the Defendant, before ſuch a Day, ſhould pay to the Plaintiff 100 *l.* or otherwiſe ſhould procure one *A.* being a Stranger, to be bound to the Plaintiff for the Payment of 12 *l. per Annum* to the Plaintiff for his Life; and the Defendant pleads, that he hath performed the ſaid Award; and the Plaintiff replies, that the Defendant hath not paid the ſaid 100 *l.* without ſaying, nor hath procured *A. &c.* yet this is a good Replication, for the Award as to that Part is meerly void, and therefore the Plaintiff need not take Notice thereof. 29 *Eliz.* between *Wilmen* and *Oldfeild*, 1 *Leon.* 304.

8. So, if the Award be, that the Defendant, together with a Stranger, ſhall enter into a Bond; in the Aſſignment of a Breach, the Plaintiff muſt not ſay, that the Defendant and a Stranger did not enter into a Bond. By three Judges againſt Two. But the other Two held that the Plaintiff ſhould

have ſhewn the whole Award, and thereupon the Law would have adjudged one Part void, and not to have been done. *Vide* 1 *Godb.* 165. 2 *Rol. Rep.* 46.

9. An Award that one ſhall be bound with Sureties, is void as to the Sureties. 18 *E.* 4. 23.

10. In an *Aſſumpſit* to perform an Award, by which the Arbitrator awarded the Defendant ſhould be bound with ſufficient Surety to the Plaintiff, for the Payment of a certain Sum of Money, and for Breach aſſigns, that the Defendant did not become bound to the Plaintiff *modo & forma*, as was awarded; and upon Demurrer it was adjudged, that though the Award was void as to the Finding of Surety, 'twas good as to the Defendant himſelf, and the Breach well aſſigned, that he did not become bound; and the *Modo & forma* only ſhall relate to himſelf, and not to the Surety. *Paſch.* 23 *Car.* 2. between *Coke* and *Whorwood*, 2 *Lev.* 6.

11. In an *Aſſumpſit* it was recited, that ſeveral Differences had been between the Plaintiff and Defendant, (but does not ſay touching what Matters they were in Difference), which were ſubmitted to the Award of *J. S.* who did award *de & ſuper Præmiſſis*, that the Defendant ſhould pay the Plaintiff 30*l.* in Satisfaction of all Sums due to him out of the Eſtate of one *Woolly*. After Verdict for the Plaintiff, Judgment was ſtaid; but at laſt, after divers Motions, Judgment was entred for the Defendant, becauſe it does not appear that the Defendant is Executor, Adminiſtrator, or Truſtee for *Woolly*; it does not appear he had any Thing of *Woolly*'s, or that he ſubmitted on Behalf of him, and ſo no Conſideration why he ſhould be charged for the Eſtate of *Woolly*. Between *Adams* and *Statham*, *Mich.* 30 *Car.* 2. 2 *Lev.* 235.

12. An Award, as has been before obſerved, may be good, though a Thing is to be done by a

Stranger, where ſuch Stranger is uſed as an Inſtrument, or is to do a miniſterial Act; but it cannot be a judicial Act, for then it would be void.

13. As if an Award be, that one ſhall pay 10 *l.* to the other, and in Surety of Payment he ſhall be bound in an Obligation to the other, by the Advice of his Counſel; this is good, for it is incident and purſuant, that his Counſel ſhould make the Payment ſure. 19 *E.* 4. 1.

14. So if there be an Award, that one Party ſhall pay 10 *l.* to the other, and that the other ſhall make a general Releaſe, as fully and beneficially as Counſel ſhall adviſe; this is a good Award; for the Counſel hereby hath not any Power to do a judicial Act, but a miniſterial only; for the Arbitrator hath directed the Extent of the Releaſe, *ſcilicet* to be general, and the Counſel are only to make it as ſtrong in Law as they can. *Trin.* 1650. between *Cater* and *Startut*, 1 *Rol. Abr.* 251.

15. An Award to pay 20 *l.* for a Horſe, if *J. S.* ſhall ſay it is worth ſo much, is good, becauſe a miniſterial Act only is referred to *J. S. per* two Judges. 2 *Rol. Rep.* 214. but *quære*, and *vide Palm.* 147. where it is ſaid to be a judicial Act.

16. But in Debt upon an Obligation, conditioned for the Performance of an Award to be made, *&c.* the Plaintiff ſhewed an Award, that the Defendant ſhould releaſe all Actions, *&c. ut talis adviſaret, &c.* and it was adjudged to be a void Arbitrament to refer it to the Act of another, who was to do a judicial Act; and that therefore the Defendant is not bound to perform it. Between *Emery* and *Emery*, 41 *Eliz. Cro. Eliz.* 726.

17. So an Award, that one of the Parties ſhould leave ſo many Trees for Houſe-bote, *&c.* as the Arbitrators, upon Advice with Counſel at the next Aſſizes, ſhould appoint, is void; but *note*, that in this laſt Caſe it is not ſaid to be void upon the Act,

which is to be done by a Stranger; but becauſe the Arbitrators cannot reſerve any future Power to themſelves. *Cro. Jac.* 315.

18. An Award to pay ſuch Coſts as a Prothonotary ſhall tax, is good. 1 *Sid.* 258.

19. An Award that one of the Parties ſhall ſurrender his Copyhold into the Hands of Two of the Tenants of the Manor, who ſhall preſent it, *&c.* is a good Award, tho' done to Strangers, who are not compellable, becauſe they are to be uſed but as Inſtruments. *Mich.* 13 *Jac.* 1. between *Coote* and *Pooly*, 1 *Rol. Abr.* 247.

20. So it is a good Award, that one of the Parties ſhall make a Deed of Feoffment, with a Letter of Attorney, to *J. S.* to make Livery, for then *J. S.* is to be uſed but as an Inſtrument. *Ibid.*

21. So an Award, that one of the Parties ſhall levy a Fine before the Juſtices *de Banco*, before ſuch a Day, is good; though this cannot be done without the Act of the Court. 19 *E.* 4. 1.

22. But it is ſaid, that if the Award be, that one ſhall command the Juſtices *de Banco*, to make him levy a Fine before a certain Day; this is void, becauſe it is not in his Power. *Ibid.*

23. And as the Arbitrators cannot award that a Stranger ſhall do any one judicial Act; *a fortiori* they cannot award that the Parties ſhall ſtand to the Award of another. 8 *E.* 4. 11. *a.*

24. But if a Stranger had made an Arbitrament before between the ſaid Parties; an Award to ſtand to ſuch an Arbitrament of the Stranger is good. 39 *H.* 6. 10.

25. Neither can the Arbitrators reſerve to themſelves a Power after the Time allowed them is expired, to do a judicial Act; for when the Time allowed them to make their Award is expired, they are as much Strangers as any other Perſons.

It is ſettled that Arbitrators cannot proceed on a Reference, after they have once named an Umpire; for then their Authority ceaſeth, tho' the Time for making the Award is not expired. *Rep. of Practice in* C. B. 116.

But the Appointment of an Umpire before their own Time for making an Award is expired, may be good: As in the Caſe of *Doyley* and *Pitſoe*. An Action of Debt was brought upon a Bond, conditioned that the Parties ſhould ſubmit to the Award of two Arbitrators, provided they made their Award on or before the 13th of *March* next, and if they made no Award, then that they ſhould appoint an Umpire before the 17th of the ſaid *March*. The Defendant pleaded, that no Award was made on or before the ſaid 13th Day of *March*; but that they did, before the ſaid 17th of *March*, to wit, upon the 11th, chuſe and appoint an Umpire, who had made an Award. By the Court: There are no Words, which by any Conſtruction can be intended to limit or circumſcribe the Election of an Umpire till after the 13th of *March*. The plain Senſe of the Submiſſion is, that they ſhould make their Award by a certain Day; or in caſe they did not make it, or could not agree, that then they ſhould nominate an Umpire. And they ſaid, the Court has not been nice in conſtruing the Time of the Umpire's Appointment, provided it was ſoon enough for him to make his Award. *Burn's* Juſtice 8*vo* 119.

4thly, *How far an Award which appoints the Doing of a Thing to a Stranger, be good, or not.*

1. Awards have been ſaid to be void, as much when an Act was to be done to a Stranger, as by a Stranger; but as by the foregoing Caſes it may be ſeen, that where the Stranger was compellable, or

uſed only as an Inſtrument, or to do a miniſterial Act only, the Award was good; ſo in the following Caſes it will appear, that awarding a Thing to a Stranger, if the Party to the Submiſſion has any Benefit by it, the Award may be good.

2. If an Award be to pay a certain Sum of Money to a Stranger, who is out of the Award, it is void. *Moor* and *Beedle*, 10 *Co.* 131.

3. If a Condition be to ſtand to the Award, *&c.* and the Award is, that one ſhall aſſure Lands to the other and his Wife, where the Wife is a Stranger to the Submiſſion; he is not bound to perform this Award as to the Wife. 1 *Rol. Abr.* 243.

4. If *A.* and *B.* ſubmit to the Award of *J. S.* who awards that the Servant of *A.* ſhall pay Money to the Servant of *B.* this is a void Award, for the Servants of both are Strangers to the Submiſſion. 18 *Eliz.* between *Dudley* and *Mallery*. 3 *Leon.* 62.

5. But if the Award be, that *A.* ſhall pay Money to the Servant of *B.* this is a good Award, for *A.* is a Party to the Submiſſion. *Ibid.*

6. But *quære*, Whether in this latter Caſe it muſt not appear by the Award, that *B.* ſhall receive it, to the Uſe of his Maſter; and ſee *N. Dyer* 242.

7. If *J. S.* and *J. D.* are bound in 20 *l.* at my Requeſt, and the Requeſt of *W. N.* and after there is a Controverſy between us Two, which of us ſhall pay this Money, among other ſuch Bargains between us; upon which all Matters in Controverſy are ſubmitted to Arbitament; and the Arbitrator awards that I ſhall pay one Moiety of the Money, with the Uſe, and *W. N.* the other Moiety to the Obligee; this is a good Award, though he be a Stranger to whom it is to be paid, by thoſe who ſubmitted themſelves; for here appears to be an Advantage to the Parties. 16 *Jac.* 1. between *Gray* and *Gray*, 1 *Rol. Abr.* 247.

8. If

8. If *A.* and *B.* for themſelves, and the Wife of *B.* ſubmit to an Award, the Arbitrators may Award that *A.* ſhall pay Money to *B.* and his Wife, becauſe the Controverſy did ariſe by Reaſon of the Wife. *March* 78. Adjudged, and affirmed upon a Writ of Error. An Award that Money ſhould be paid to the Mother of one of the Parties, was held an Advantage. 1 *Salk.* 74

9. In Debt upon an Obligation, conditioned to perform an Award, the Plaintiff ſets forth the Award, *ſcilicet* that the Defendant ſhould make an Eſtate for Life of certain Lands to the Plaintiff, Remainder to *J. S.* to which the Defendant demurred; and it was held, that the Award, as to the particular Eſtate, was good, though void as to the Remainder, which was to be made to *J. S.* he being a Stranger. *Hill.* 42 *Eliz.* between *Bretton* and *Prat*, *Cro. Eliz.* 758.

10. If among other Things it be awarded, that one of the Parties, before the Mayor of *T.* and three others, ſhall make an Acknowledgment that he hath done ſuch Injuries to the other Party; this is a void Award, becauſe the Mayor and the three others are Strangers to the Submiſſion; and there is no Means to compel the Mayor and the three others to meet. *Mich.* 12 *Car.* 2. between *Spignurel* and *Jene*, 1 *Sid.* 12. according to the better Opinion of the Book, though Judgment is ſaid to have been given for another Reaſon.

11. But if the Award be, that one of the Parties ſhall make his Acknowledgment, *&c.* before the Mayor of *T.* only; this is a good Award; *per Bridgman* and *Tyrril* cont' *Hyde.*

12. In Debt upon a Bond conditioned, that *A.* and *B.* ſhould perform an Award, the Defendant pleaded no Award made; the Plaintiff ſet forth an Award, which was, that *A.* ſhould pay *B.* 50 *l.* and that *A.* ſhould beg *B.*'s Pardon in ſuch Manner, and

and in ſuch Place, as *B.* ſhould appoint; and that then each Party ſhould Seal mutual Releaſes: And the Court held this naught; for the Arbitrator was to determine, and not to make *B.* his own Judge in his own Cauſe; and though the Time and Place be but Circumſtances; yet in this Sort of Satisfaction they make the moſt conſiderable Part. 10 *Will.* 3. between *Glover* and *Barrie*, 1 *Salk.* 71.

But *note*, That there was no Objection made as to the Mayor's being a Stranger in this laſt Caſe.

5thly, *How Awards muſt be made according to the Submiſſion, where there are ſeveral Arbitrators.*

1. If two Men ſubmit themſelves for all Matters, *&c.* to the Award of certain Arbitrators, to be made before a certain Day; and if they do not make any Award before the Day, that then they ſubmit to the Ordinance and Judgment of *J. S.* If the Arbitrators made an Award of Part of the Things ſubmitted, and of Part not, the Umpire cannot make any Award of this Part, of which the Arbitrators have made no Award; becauſe he hath no Power given, but upon the Arbitrators making no Award. 39 *H.* 6. 10.

2. But if the Submiſſion be, that if the Arbitrators make no Award of the Premiſſes, or of any Parcel thereof, then the Umpire ſhall have Power to make an intire Award, or of the Parcel which remains, as the Caſe is; in this Caſe the Arbitrators may make an Award of Parcel, and the Umpire of the Reſidue, becauſe this is expreſly ordained. 39 *H.* 6. 11. *b.*

3. If the Condition of an Obligation be, to ſtand to the Award of *A. B. C.* and *D. ita quod* the ſaid Award before ſuch a Day be made in Writing

ing by the ſaid *A. B. C.* and *D.* or any Two of them, under their Hands, *&c.* any Two of the Arbitrators, without the reſt, may make an Award; for though by the firſt Part they are bound to ſtand to the Award of thoſe Four; yet their Power is divided by the ſubſequent Words, and the *ita quod, &c.* is but an Explanation of the Condition, and the Whole makes but one Sentence. *Paſch.* 9 *Jac.* 1. between *Sallows* and *Girling*, *Yelv.* 203. adjudged upon Demurrer.

4. In Debt upon an Obligation, the Condition was, to ſtand to the Arbitrament and Order of Four ſuch Perſons, naming their Names, *&c.* ſo as the ſame Award be made and delivered up in Writing, under the Hands and Seals of the Four, or any Three of them; the Defendant pleaded no Award, and the Plaintiff ſhews, that Three of them made an Arbitrament under their Hands and Seals, and ſhews what, and aſſigns for Breach, the not paying a certain Sum of Money, which they arbitrated to be paid: Whereupon the Defendant demurred, pretending this Arbitrament to be void, becauſe it was not made by all the four Arbitrators; for the arbitrative Authority is given to them all Four, and not unto Three of them, and the Words, *So as the ſame be made and delivered under the Hands and Seals of them, or any Three of them*, doth not alter the Authority, but that they ought all to make it; nor is it good if it be under the Seals of Three of them; and to that Opinion the Court at firſt inclined; but afrer ſeveral Arguments it was held, that the Arbitrament was good; for every Part of the Condition being weighed, the Intent appears, that it ſhould be ſufficient if Three of them made it: And although the Words at the Firſt are to them Four jointly; yet that is ſufficiently disjoined afterwards by the Words, *So as the ſame be made and delivered by any Three of them*; and an Authority may be

be well divided, though an Interest cannot; and this Judgment was affirmed in the Exchequer-Chamber. *Pasch.* 14 *Jac.* 1. between *Berry* and *Penring*, *Cro. Jac.* 399, 400.

SECT. IV.

Awards must be made according to the Submission, with Respect to the Making, Signing and Sealing, Delivering, and other Circumstances.

AS there are Variety of Cases which fall under this Section, and as these Parts of the Award, though they seem but Circumstances, have occasioned as many Doubts and Debates as any relating to the whole Learning of Awards; it will therefore be necessary, as in the foregoing Section, to consider them separately in the following Order;

I. As to the Time and Manner of making Awarding Releases, &c. how the Award must agree with the Submission.

II. As to the Signing and Sealing.

III. As to the Date and Delivery.

IV. Concerning the Appointing of a Place, Demand, Tender and Refusal, and other Circumstances.

1st,

1ſt, *As to the Time and Manner of making Awarding Releaſes*, &c. *How the Award muſt agree with the Submiſſion.*

1. AS to the Time of Making the Award, it is abſolutely neceſſary, that it be made within the Time allowed the Arbitrators by the Submiſſion; for if they make an Award before their Power commences, or after it is expired, or after either of the Parties have revoked, it is abſolutely void.

2. It may be made on any Part of the Day on which the Bonds of Submiſſion bear Date; alſo it may be made the * Night before the Time is expired; and though it has been doubted, whether it could be made in the Night-time, yet it has been reſolved, that being a judicial Act, it may; but it muſt not be made ſo as to prevent all the Parties to the Submiſſion from being preſent; for if it be made in the Night-time, and no Notice proved to have been given to the Parties, it will be an Argument of Partiality in the Arbitrators. * Cro. Eliz. 676.

3. If Two ſubmit all Debts, Treſpaſſes, and other Things, *ita quod* the Award be made before ſuch a Day; if the Arbitrators make an Award of Debts at one Day, and of Treſpaſſes at another Day, and of other Things at another Day, though they are all before the Day appointed, yet this is not a good Award as to the Two laſt Awards, becauſe they have Power to make but one Award. 39 *H.* 6. 12.

4. But the Arbitrators may at one Day conſider one Point, and at another Day another, and at a third Day the third Point, and then give one Judgment upon all the Points; ſo that the Judgment ought be be one, and not ſeveral. 39 *H.* 6. 12.

5. If

5. If Two ſubmit themſelves to the Award of *J. S. ita quod fiat* before *Michaelmas*, and the Arbitrators award that one ſhall pay 5 l. to the other for ten Loads of Wood, and awards ſeveral other Matters for other Things; and after this, if he that is to pay it can diſprove, or better prove the Payment of any of the ſaid Sums before them, or any of them, before the ſaid Feaſt of *Michaelmas*, then ſo much as is proved ſhall not be paid at the ſaid Feaſt; this is a good Award; for the firſt Part is good, and ſo thereby the Authority of the Arbitrators ended, and then a Reference to Proof or Diſproof is meerly void. *Paſch.* 16 *Jac.* 1. between *Beckwith* and *Warley*, 1 *Rol. Abr.* 250.

6. If an Award be made touching certain Currans, that if the Defendant can, before the 20th Day of *December*, make it appear that the Currans were delivered to the Plaintiff, that then the Arbitrators ſhould make a further Award within fourteen Days after, if they can agree, otherwiſe *J. S.* as Umpire, ſhould conclude it within ſeven Days, and that the Plaintiff and Defendant ſhould ſtand to the Award of the Arbitrators, if they make any, or of the Umpire, *&c.* and if the Defendant, before the ſaid 20th of *December*, do not ſhew any ſuch Teſtimony, then the Arbitrators award that the Plaintiff ſhall not pay for the Currans, but ſhall be free from any other Claim; *ac etiam Arbitratores arbitrati fuerunt quod* Defendant ſhall pay 19 *l.* 12 *s.* before the firſt Day of *January* after, *ſi Nullum alterius Arbitrium fieret* for the Currans before the ſaid Time; this Award is void, though it be averred that no other Award was made before the ſaid 1ſt of *January*, for the Award, that if it be made appear, *&c.* they will make an Award, or make an Umpire, is void; for they cannot make an Award by Parcels, nor make an Umpire; and then the laſt Clauſe, that the Defendant ſhall pay 19 *l.* 12 *s.*

12 *s.* if no other Award is made before the firſt of *January*, hath Dependance on the firſt Part of the Award, which was void; and it was not intended that the Defendant ſhould pay the Money, if the Arbitrators or Umpire made any Award before; and if they had made any Award, this had been void. *Mich.* 9 *Car.* 2. between *Brown* and *Dalton*, 1 *Rol. Abr.* 250, 251.

7. If the Condition be to ſtand to the Award of *J. S.* of all Matters depending till 29th of *January*, *&c. ita quod*, *&c.* and the Award recites, That whereas there were depending the ſaid 29th of *January* divers Matters, *&c.* and he awards *de & ſuper Præmiſſis* of all Matters till the 28th of *January*, yet this is a good Award; becauſe it does not appear that any Matter was depending the ſaid 29th Day of *January*, which was not depending before the ſaid 28th Day of *January*; and therefore, without Special Matter ſhewn, it ſhall be intended a good Award, with the ſaid Averment *de & ſuper Præmiſſis*. *Trin.* 7 *Car.* 1. between *Ward* and *Unwin*, *Cro. Jac.* 216.

8. If two ſubmit all Controverſies the 4th of *May*, to the Award of *J. S. ita quod Arbitrium fiat de Præmiſſis*, and *J. S.* makes an Award *de Præmiſſis* of all Controverſies till the 1ſt of *May*, though here he hath not made any Award for Part of the Time ſubmitted, but the Award is ſhorter; yet becauſe it is made *de Præmiſſis*, it ſhall not be intended that there were any mean Controverſies between them, between the firſt of *May* and the 4th of *May*, unleſs this be ſhewn of the other Part; and therefore the Award is good enough. 1 *Rol. Abr.* 257.

9. If two ſubmit themſelves to the Award of *J. S.* for the Title of certain Copyhold Land, and *J. S.* awards, That one, *ſcilicet A.* ſhall pay to the other, *ſcilicet B.* 6 *l.* upon the 21ſt Day of *May*, and 6 *l.* at *Michaelmas* next enſuing, and that *B.* ſhall releaſe

to

to *A.* all his Right in the Copyhold *ſuper Pred' die Maii*, omitting *viceſimo*, and awards over, that he ſhall make further Aſſurance within three Days after, *&c.* this is a void Award, for the Award for making of the Releaſe *ſuper Pred' primo die Maii* is void, there being no ſuch Day before mentioned; and it appears, that the Releaſe at the ſaid Day, ſhould be the principal Conſideration on his Part who ought to make it; and then the reſt of the Award for further Aſſurance, which is good, is not ſufficient, this being but Part of the Conſideration, and award of his Part. 1 *Rol. Abr.* 254.

10. It is expedient to mention in the Award, the Time and Place in which it was made, though it be not ſo provided by the Submiſſion; but if the Submiſſion requires it, it is abſolutely neceſſary.

11. But the Plaintiff need not ſet forth in his Declaration, the Time and Place in which the Submiſſion or Award was made; but if the Defendant denies either, the Plaintiff may reply, that the Award or Submiſſion was made at ſuch a Place, *&c.* 2 *Brownl.* 137.

12. But if an Award is pleaded in Bar of a Treſpaſs, a Place muſt be laid where the Submiſſion was made. *Cro. Eliz.* 66.

13. As it is neceſſary that an Award ſhould make a final End of all the Matters in Controverſy, and as the Arbitrators always thought that it could not be better effected than by awarding mutual Releaſes to be given, they have ſeldom omitted, after other Things awarded, to order, that each Party ſhould give as general Releaſes as could be framed; and thoſe general Releaſes, where there were Demands on both Sides, being held advantageous to each Party, were thought (as in Truth they are) the moſt expedient Means for putting an End to the Controverſy, being both Final and Beneficial to the Parties.

14. But

14. But notwithſtanding the Expediency of awarding Releaſes, they ſometimes have been the Occaſion of that Strife which they were deſigned to prevent, which was chiefly occaſioned by the Arbitrators awarding Releaſes to the Time of the Award, or to the Time of making the Releaſes, which uſually took in more Time than was ſubmitted.

15. But now this Matter ſeems to be as well ſettled as any Thing relating to Awards, though it has occaſioned as many Debates, as well as contradictory Reſolutions.

16. At firſt indeed it was held, that awarding Releaſes to the Time of the Award was void, as comprehending more Time than was ſubmitted, and therefore not made according to the Submiſſion.

17. Afterwards it was held, That the Plaintiff ſhould alledge that no new Matter did ariſe betwixt the Submiſſion and the Award, which if he had done, it would be good, unleſs the Defendant took Iſſue upon it, and it was found for him.

18. But ſoon afterwards it was reſolved, That the Plaintiff need not alledge that any new Matters did ariſe, but that, if in Truth there were any, it was incumbent on the Defendant to ſhew it.

19. And it has been frequently reſolved, That where the Arbitrators award general Releaſes, without mentioning any Time, it ſhall be to the Time of the Submiſſion only.

20. And now it is clearly held, that though the Arbitrators award general Releaſes to be given to the Time of the Award, yet the Award ſhall be good, and that upon a double Account.

21. 1ſt, Becauſe no new Cauſe of Action ſhall be intended to have ariſen between the Time of the Submiſſion and Award, if it be not ſhewn by the Defendant.

22. 2dly, Becauſe that a Releaſe to the Time of the Submiſſion is a good Releaſe, in Purſuance of the Award, and this latter ſeems to be the beſt Reaſon; for a Man might have a Cauſe of Action accrue to him between the Submiſſion and Award, and not know of it; and it were hard to put him under a Neceſſity of releaſing it; and the Reaſon why a Releaſe to the Time of the Submiſſion is held good, is not becauſe it ſhall be intended to be the Meaning of the Arbitrators that it ſhould be ſo, but it is rather a Controlling of their Meaning, as far as it is void by Conſtruction of Law.

But though the Law ſeems to be thus ſettled as to this Matter, yet as it is deſigned in this Treatiſe, to mention all the Caſes reported concerning Awards and Arbitraments, I ſhall inſert the Caſes themſelves which warrant the above Obſervations, that the Reader may be the better able to judge of them.

23. If the Condition of an Obligation be to perform an Award of all Actions between them, and the Arbitrators make an Award, That one ſhall make a Releaſe to the other of all Actions till the Day of Award made, which was after the Submiſſion; this is a void Award, becauſe it comprehends more Time than was ſubmitted; for by the Submiſſion ſuch Actions only which were then between them were ſubmitted, and this is intire, and therefore the Obligor is not bound to perform it. Between *Vanlore* and *Trible*, 14 *Jac.* 1. 1 *Rol. Abr.* 242.

24. If an Award be made *de & ſuper Premiſſis*, in Manner following, *ſcilicet* That one ſhall pay 40 *s.* to the other, and that the other ſhall make a general Releaſe of all Matters till the Award made; this is void as to the Releaſe, becauſe it comprehends more Time than was ſubmitted; and it is

likewiſe void for all; for it cannot be intended that the 40*s.* ſhall be paid in Satisfaction of all Matters, for it may be paid in Part of Satisfaction; ſo that this, together with the general Releaſe, is a good Diſcharge; for the Arbitrators intended that the Releaſe, with the Money given, ſhould be a Satisfaction for all Matters between them, and not the Money without the general Releaſe. 15 *Jac.* 1. *Poph.* 134.

25. If two ſubmit the 1ſt of *May* all Matters between them, and the Award is, That one ſhall pay to the other 20*s.* in Satisfaction of all Matters between them till the Time of the Award made, which was the 4th Day of *May*, though this comprehends more Time than was ſubmitted, yet becauſe it ſhall not be intended that there were any mean Matters between the Submiſſion and Award, unleſs it be ſhewn of the other Part, the Award is good. *All.* 85, 86. But my Lord *Roll*, in his Abridgment of this Caſe, is not ſatisfied with the Reaſon here given, although he ſays the Court relied on it, for this croſſed the Reaſon of the Judgment of the above Caſe; but the Reaſon of this Caſe is, for that although there were other Matters mean between the Submiſſion and Award, and ſo the Award for thoſe Matters void; yet here is no entire Act to be done, as in the above Caſe of a Releaſe, but the ſaid 20*s.* continues a good Satisfaction of the other Matters ſubmitted; and all the Inconvenience is, that peradventure the Money to be given was increaſed for the mean Matters, and ſo he was at ſome Prejudice. 1 *Rol. Abr.* 258.

26. In Debt upon an Obligation dated the 29th of *July*, conditioned for the Performance of an Award, *&c.* ſo as the ſaid Award be made before the Feaſt of St. *Bartholomew*; and the Plaintiff ſhews, that the Arbitrators the 8th of *Auguſt* awarded that he ſhould have ſuch a Horſe, which

was in Controverſy, and that the Defendant ſhould pay unto him 3 *l.* towards his Charges, and that they ſhould releaſe the one to the other all Matters whatſoever, betwixt the ſaid Time and St. *Michael*; and alledgeth Breach for Non-payment of the ſaid 3 *l.* whereupon it was demurred; and it was moved that it was not a good Arbitrament, being made on the 8th of *Auguſt*; to releaſe all Actions, extends to more than they had an Authority to arbitrate; and although it was ſaid, being pleaded, that they made the Arbitrament *de & ſuper Premiſſis*, it is intended that there was not any Cauſe of Action ariſing betwixt the 29th of *July* and 8th of *Auguſt*, unleſs it were ſhewn on the other Part; *ſed non Allocatur*; for the Words being general, unleſs the Plaintiff helps it with an Averment, that there were no more Cauſes betwixt them, it is not good; and then the Releaſe appointed being void, there is nothing arbitrated for the Defendant's Benefit. *Cro. Jac.* 352, 353.

27. If there be a Submiſſion to the Award of *J. S.* of all Matters till the Submiſſion, *ita quod fiat de Premiſſis*, and thereupon an Award is made at a Day after the Submiſſion, that one ſhall make a general Releaſe of all Matters till the Award, and that the other ſhall pay 10 *l.* though there be an Award of both Parts, *Preter* the Releaſe, which is void, yet the Award is void in the Whole, becauſe it was intended that the Releaſe ſhould be Part of the Conſideration. 16 *Car.* 1. 1 *Rol. Abr.* 259.

28. If the Submiſſion be by Obligation, dated the 17th of *November*, to be made before *February* after, and the Award is made the 27th of *January*, that the Defendant ſhall make a Releaſe of all Actions, *&c.* till the Award; and in Debt upon an Obligation for Non-performance of this Award, the Breach is aſſigned in not making of a Releaſe;

and

and it is averred, that no other Matter was between them; yet this is no good Breach, becauſe if he ſhould make this Releaſe, it would releaſe the Bond of Submiſſion. 1 *Rol. Abr.* 260.

29. But if a Condition be to ſtand to the Award of *J. S. ita quod fiat de Premiſſis, &c.* and the Award is, That *A.* ſhall pay to *B.* the other Party, 20 *l.* two Months after the Award, and upon Payment thereof, each of the Parties ſhall make general Releaſes to the Time of the Payment; this is a good Award, though it comprehends more Time than was ſubmitted; for when the Money is paid, then there is an End of the Submiſſion and all, and ſo no Prejudice, though it releaſes the Obligation or Promiſe of Submiſſion. But *Roll* adds a *Dubitatur* to it. 1 *Rol. Abr.* 260.

30. If *A.* and *B.* ſubmit to the Award of *J. S.* who awards, that *A.* ſhall pay to *B.* a Sum of Money at two ſeveral Days, and that they ſhall preſently give to one another mutual Releaſes; this is a void Award; for by the Releaſe, the Bonds of Submiſſion, and the Money, would be diſcharged. Between *Adams* and *Adams*, 2 *Mod.* 169.

31. But if an Award be made, that a certain Sum of Money ſhall be paid at two ſeveral Days, and that mutual Releaſes ſhall be given; this is a good Award; for by the very Method and Order of the Award, the Releaſes are not to be given till after the Money is paid. 2 *Mod.* 170.

32. If a Condition be to ſtand to the Award of *J. S.* of all Matters depending, *ita quod Arbitrium fiat de Premiſſis*, and the Award is made upon the Premiſſes, that one ſhall releaſe unto the other all Matters till the Award, which is out of the Submiſſion, though there are Matters between them which aroſe after the Submiſſion and before the Award, yet the Award is good, if it be not averred

to the Court, that there were Matters between them in the mean Time. 1 *Rol. Abr.* 244.

33. If an Award be made *de & ſuper Premiſſis*, and the Condition is *ita quod fiat de Premiſſis*, and the Award is, that one ſhall make a general Releaſe to the other of all Matters till the Award, and that the Parties ſhall be Friends and loving; this is good, although the Award is void as to Matters after the Submiſſion; and therefore he is not bound to make any Releaſe of them, but of thoſe only which were before the Submiſſion; and in as much as it is averred, that the Award was *de & ſuper Premiſſis*, it ſhall be intended that there were not any other Matters. 1 *Rol. Abr.* 260.

34. In Debt upon an Obligation, dated *December* 1. conditioned to perform an Award, ſo that it be made, *&c.* before the laſt Day of *Hilary* Term next enſuing; the Defendant pleads No Award; the Plaintiff replies, and ſhews an Award made before the laſt Day of the ſaid *Hilary* Term, *viz.* the 8th Day of *February*, *de & ſuper Premiſſis*, that the Defendant, within a Week after the Date of the Award, ſhould pay unto the Plaintiff 7*l.* 10*s.* in Satisfaction of all Demands whatſoever; and that upon Payment thereof each of the Parties ſhould releaſe to the other all Demands; and avers, that no new Controverſy or Cauſe of Action did ariſe within the Week after the ſaid Award: The Defendant rejoins *quod bene & verum eſt*, that the Arbitrators made an Award *prout*, but further ſaid, That after the Submiſſion and before the Award, *viz.* the 6th of *February*, a new Cauſe of Action aroſe to the Plaintiff againſt the Defendant; for that the Defendant on the ſame 6th of *February* did break and enter the Cloſe of the Plaintiff, called *Blew*; whereof the Arbitrators had Notice; and ſo they made no Award; whereon the Plaintiff demurred; and now it is objected that the A-

ward

ward was void. 1ſt, Becauſe it is for the Payment of Money in Satisfaction of all Damands generally, which extends to the Time of the Award made; ſo it is beyond or out of the Submiſſion. And 2dly, That the Releaſe being general, refers to the Time of the Releaſe given, and conſequently ſhall releaſe the laſt Cauſe of Action, which was not within the Submiſſion, and ſhall alſo releaſe even the Bond of Submiſſion: But upon Argument it was reſolved by the whole Court, that the Award was good, and a Difference was taken, where the Award is for a Satisfaction till the Award, or for a Releaſe till the Award; this is ill; but when the Award is general, without being limited to any Time, and the ſame is made *de & ſuper Premiſſis* (as here) this ſhall be intended to the Time of the Submiſſion, and a Releaſe of all Demands till the Submiſſion ſhall be a good Performance of the Award; and ſo Judgment was given for the Plaintiff. *Mich.* 36 *Car.* 2. between *Robinet* and *Cobb*, 3 *Lev.* 188.

35. A Submiſſion was of all Controverſies pending, and the Arbitrators awarded, that all Suits now pending between the Parties ſhould ceaſe, and that the Defendant ſhould pay 10 *l.* in full of all Demands, and releaſe all Demands till the Time of the Award, and upon the Payment of the Ten Pounds, the Plaintiff ſhould releaſe to him, *&c.* Upon a Writ of Error of the Judgment given in *C. B.* the Court held, That an Award of a general Releaſe of all Demands till the Time of the Award, is good; for nothing new ſhall be intended to ariſe in the mean Time; and if any new Demand or Controverſy did happen in the mean Time, the Award as to that new Demand or Controverſy is void, for that was not within the Submiſſion; and therefore it is a good Performance of it to tender a Releaſe of all Matters in Controverſy to the Time

of the Submiſſion, which is all he is bound to releaſe; alſo if a new Controverſy happened, which is not to be intended, he that pretends to excuſe the Non-performance, ought by his Pleading to ſet it forth, and ſhew it. 2 *Ann.* between *Simon* and *Gavil*, 1 *Salk.* 74.

36. If *A.* and *B.* ſubmit to the Award of *J. S.* and he awards that *A.* ſhall pay to *B.* 10*l.* and that *B.* ſhall pay to *A.* the Expences at the making the Award, and that upon the Performance of the Whole, they ſhall make to each other general Releaſes; this is a good Award, for the Releaſes ought to be made on the Performance of that which is well awarded, and not to ſtay till the Performance of that which is void. 2 *Lev.* 3.

37. An Award was made, that the Defendant ſhould pay the Plaintiff 7*l.* 10*s.* and alſo all the Expences of a Suit, proſecuted by the Plaintiff againſt the Defendant; and that thereupon each Party ſhould make general Releaſes to one another; and it was objected, that though the Award was good as to the 7*l.* 10*s.* yet the Releaſes not being to be made, till that Part concerning the Expences, which is void for Uncertainty, be performed, the whole Award is void, and the Defendant is not obliged to perform it; but it was reſolved, that upon Payment of the 7*l.* 10*s.* which was well awarded, each Party was obliged to releaſe; and that there was no Occaſion to wait the Performance of that Part of the Award, which was void. 6 *W.* 3. between *Bargrave* and *Atkins*, 3 *Lev.* 413.

2dly, *As to the Signing and Sealing.*

38. If the Bond of Submiſſion (as is moſt common) requires that the Award be ſigned or ſealed, it makes it to be as neceſſary, that the Award ſhould

ſhould agree with the Submiſſion, in this Reſpect as much as in any other.

39. As if the Condition be, to ſtand to the Award of *J. S. ita quod* the Award be made, ſigned, and delivered by the Arbitrators as their Deed, before ſuch a Day; and after the Arbitrators make an Award, and this is ſealed and delivered as their Deed, but they did not ſign it; the Obligor is not bound to perform it; for the Signing is a particular Thing, diſtinct from the Delivery. 1 *Rol. Abr.* 245.

In Debt on an Obligation, conditioned to ſtand to the Award of *A. B. C.* and *D.* ſo that the ſaid Arbitrators, or any Three or Two of them, make the ſaid Award under their *Hands* and *Seals*, before ſuch a Day; the Plaintiff ſhews, that the Arbitrament was under their *Hands*, but doth not ſay under their *Hands* and *Seals*; and for this Cauſe the Judgment was reverſed in the Exchequer-Chamber. 8 *Jac.* 1. between *Sallows* and *Girling*, 2 *Cro.* 277, 278.

In Debt on a Bond, conditioned to perform an Award, ſo as the ſaid Award were made and put into Writing, under the Hand and Seal of the Arbitrator, *&c.* the Defendant pleads, that the Arbitrator made no Award; and the Plaintiff replies an Award, by which ſuch and ſuch Things were to be done, and ſets it forth *in hæc verba*, under the Seal of the Arbitrator; the Defendant rejoins, that the Arbitrator made no Award under his hand and Seal, according to the Condition of the Bond; the Plaintiff demurs, for that the Defendant ought to plead the Award under the Hand as well as the Seal of the Arbitrators; for when he produces it in Court, as he doth by a *Profert hic in Curia*, he muſt plead it formally, as well as produce it. 2 *Mod.* 77.

40. And it is ſaid, that if the Arbitrator cannot write, he ought to ſet his Mark to the Award, if the

the Bond of Submiſſion requires that the Award ſhould be ſigned. 1 *Bulſt.* 110.

Award good, though it does not appear when it was *executed*. *Barnes* 42, 43.

3dly, *As to the Date and Delivery.*

41. It is uſual in all Submiſſions which are by Bond, to expreſs, in the Condition of ſuch Bond, not only the Time the Award is to be made, but likewiſe when it is to be delivered; and ſuch Circumſtances muſt be obſerved as much as any other.

42. But herein obſerve, that if the Submiſſion be by Bond conditionally, ſo as the Award be made, and ready to be delivered to the Parties, or to ſuch of them as ſhall require the ſame, the Parties ſo bound are obliged to take Notice of the Award at their Peril.

43. But if the Words of the Submiſſion are ſo, that the Award be delivered to each Party by ſuch a Day, then it muſt be delivered to each Party accordingly.

As in an Action of Debt upon an Obligation, conditioned to perform an Award between *A.* and *B. C. ita quod Arbitrium predict' fiat & delibcretur utrique partium predictorum*, and the Award was delivered to *A.* and *B.* only; and upon a Demurrer it was held, that it ſhould have been delivered to all the Parties concerned. *Hungate*'s Caſe, 5 *Co.* 103.

44. And in this Caſe my Lord *Coke* ſays it was reſolved, That if two ſubmit on the one Part, and two on the other, and the Words are, *ut ſupra*, that a Delivery to one of the one Part, and to another of the other Part, is not good.

45. If there be a Submiſſion to the Award of *J. S.* ſo as the ſaid Award be made under his Hand and Seal, at or before the 5th Day of *Sept.* following,

ing, ready to be delivered at the Shop of *J. N.* in the *Exchange*, *London*; and in an Action of Debt upon an Award made thereupon, the Plaintiff declares, that the ſaid *J. S.* under his Hand and Seal, the 4th Day of *September* following, *apud Caſtrum Eborum*, did make an Award *adtunc & ibidem parat'* to be delivered at the Shop of the ſaid *J. N.* in the *Exchange*, *London*; this is no good Declaration, for the Parties are not bound to take Conuſance of the Delivery elſewhere than at the Place appointed. *Paſch.* 16 *Jac.* 1. between *Busfield* and *Busfield*, *Cro. Jac.* 577.

46. In Debt upon a Bond, conditioned for the Performance of an Award, *ita quod* it be made and ready to be delivered to the Parties at a certain Day and Place; the Defendant pleads *Nullum fecerunt Arbitrium*; and the Plaintiff replies, and ſets forth an Award made and delivered to the Parties at another Day and Place; and it was adjudged, that it was good, being delivered to the Parties themſelves, though at another Day and Place. 2 *Lev.* 68. But *Hale* held that it was not good; for being but the Execution of an Authority, it ought to be done at the ſame Day and Place.

47. If in Debt upon a Bond, conditioned for the Performance of an Award, ſo as it be made, *&c.* and ready to be delivered to the Parties, or to ſuch of them who ſhall deſire the ſame; the Defendant pleads *Nullum fecerunt Arbitrium*; and the Plaintiff replies, and ſets forth the Award, and ſhews a Breach, but doth not ſay that it was ready to be delivered to the Defendant; yet this is a good Replication; for when the Award is made, it is ready to be delivered to the Parties, or to ſuch of them who deſire it; ſo that it muſt be deſired, and if denied, the Party may plead that Matter ſpecially. *Mich.* 4 *Jac.* 2. between *Rowſby* and *Manning*, 3 *Mod.* 330, 331.

48. If

48. If upon an Award by Parol, it is awarded, that one of the Parties ſhall pay to the other 10 *l.* within ſix Months after the Date of the ſaid Award; this is a good Award; and *per* 2 *Inſt.* 674. if a Bargain and Sale hath no Date, it may be inrolled within ſix Months after the Delivery; for the Date in this Caſe muſt be intended the giving up of the ſaid Award within ſix Months, after which the Money ought to be paid. *Mich.* 1 *Car.* 1. between *Cable* and *Rogers*, 3 *Bulſt.* 311, 312.

49. If in Debt upon a Bond, conditioned for the Performance of an Award in Writing, or by Word of Mouth, the Defendant pleads no Award made; and the Plaintiff replies, that at the Time of the Bond and Award he had an Action againſt the Defendant for ſcandalous Words; and that the Arbitrator *ore tenus* did declare and publiſh his Award in Manner following, *viz.* That the Defendant ſhould pay unto the Plaintiff twelve Guineas, and all ſuch Money as he had expended *circa proſecutionem placit' pred'*, *&c.* this is a good Award, and well ſet forth, although the Award doth not mention any Suit before; for he that ſets forth a parol Award is not tied to the very Words; but it is ſufficient to ſhew the Effect and Subſtance of what was awarded by Word of Mouth. *Mich.* 2 *W. & M.* 2 *Vent.* 242. But it is ſaid, that if the Award had been made in Writing, in ſuch Form of Expreſſion, it would not have been good. *Ibid.*

50. In Debt on a Bond, conditioned to perform an Award, *ita quod* it be made and ready to be delivered by ſuch a Day; the Defendant pleaded no Award, and the Plaintiff replied a parol Award, and avers, that it was ready to be delivered by ſuch a Day; to which the Defendant demurred; and it was inſiſted by the Plaintiff, that a parol Award was deliverable; for a Man is ſaid to deliver a Meſſuage as well as a Letter, and that there is an

oral

oral as well as a manual Tradition; and as a parol Award is capable of Delivery, ſo it is ready to be delivered from the Time it is agreed upon; and of that Opinion was the Court, and ſo gave Judgment for the Plaintiff. 3 *Ann.* between *Oates* and *Bromil*, 1 *Salk.* 75.

51. It was awarded, that Erections, *&c.* ſhould be pulled down within the Space of fifty-eight Days from the Date of the Award, and the Award being pleaded without any Date, it was upon this Account demurred to; and it was held by the Court, that the Day of the Delivery of a Deed is the Day of the Date, though there is no Date ſet forth; for if a Deed bear Date one Day, and be delivered at another, it was really dated when delivered, though the Clauſe of *Geren. Dat.* be otherwiſe; ſo it is in the Caſe of this Award, the Making is the Date. 3 *Ann. Armitt* and *Breame*, 1 *Salk.* 76.

52. Award good, though it does not appear *when* it was executed. *Barnes* 42, 43.

4thly, *Concerning the Appointing of a Place, Demand, Tender and Refuſal, and other Circumſtances.*

1. As the Bond of Submiſſion generally requires, that the Award ſhould be delivered to the Parties, or that they ſhould, at their Peril, take Care to get it from the Arbitrators; it is alſo often inſerted in the Submiſſion, that it ſhould be delivered at a certain Place upon ſuch a Day; in which Caſe it is incumbent on the Parties to ſhew, that they have attended, not only Part, but the whole Day, *viz.* from Sun-riſe to Sun-ſet, if they would excuſe themſelves upon this Account.

2. And if any Thing is awarded to be done in Purſuance of the Award, and a Place where it ſhould be done is mentioned, it is proper that ſuch Place

Place ſhould be well known and acceſſable, as a Tavern or Coffee-houſe, or other publick Place; and then it is incumbent upon either of the Parties, as in the above Caſe, to ſhew that they have done what was neceſſary on their Parts, by being in a Readineſs to perform their Part the whole Day.

3. But the Time is often limited to an Hour or Two, and this ſeems to be moſt convenient for them; the Party need not ſhew that he has attended a longer Time.

4. There are ſome Caſes in the Books concerning the Payment of Money in or at the Houſe of a Stranger.

5. As where Money was awarded to be paid in the Houſe of *J. S.* a Stranger, it was thought not to be good; becauſe it was unreaſonable to ſubject the Party to an Action of Treſpaſs. *Style* 211.

6. And where the Payment was to be at the Houſe of *J. S.* it was held, that the Award was void, if the Owner of the Houſe had Lands adjoining to the Houſe, by which he could not come to the Houſe without being a Treſpaſſer. 1 *Rol. Abr.* 247.

7. But it has been adjudged and affirmed on a Writ of Error in Parliament, that if an Award be, that one ſhall pay ſo much to the other at the Houſe of *J. S.* this is good; for he may come to the Houſe, without entring the Houſe, and ſo he ſhall be no Treſpaſſer. 1 *Rol. Rep.* 6.

8. And a Diverſity is taken in *Style* 211. where the Payment is to be *in*, and where *at* the Houſe of *J. S.*

9. And a *Quære* is made, Whether if the Award be, that the Party ſhall pay the Money in the Houſe, or at the Houſe where the Owner has Lands adjoining, he ſhould not in ſuch Caſe come as near to the Houſe as he could, or elſe get Leave

to

to come thither. *Godb.* 255. And it is ſaid that the other Party ſhould procure Leave; and if the Stranger refuſes, this ſhall excuſe the Performance.

10. An Award was, that one ſhould pay Money at the Houſe of *J. S.* in *C.* being the Sign of the *Cock*, and it was held good, being intended a common Inn. *Cro. Car.* 226.

11. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleaded No Award; and the Plaintiff replied, and ſet forth an Award, that in or at the *Manſion* of *J. S.* in *College-ſtreet*, in *Bury*, the Defendant ſhould pay the Plaintiff ſo much, and the Defendant demurred, and Judgment was given for the Plaintiff; for although *J. S.* be a Stranger, the Words being only to pay, *in or at the Houſe*, he may go to the Door of the Houſe, and there pay it, without being a Treſpaſſer, if he cannot prevail upon *J. S.* to give him Leave to pay the Money in the Houſe. Between *Holland* and *Helwis*, 36 *Car.* 2. 3 *Lev.* 153.

12. It is now held neceſſary, that there ſhould be a perſonal Demand of the Thing awarded, when the Submiſſion is by Rule of Court; and that the Party muſt make Affidavit of ſuch Demand before he can have an Attachment. 1 *Salk.* 83.

13. A Tender and Refuſal of a Thing awarded, hath the ſame Effect in Awards as in other Caſes.

14. As if an Award be, that one ſhall pay 10*l.* to the other, in Satisfaction of all Treſpaſſes, *&c.* if he who ought to pay it, tenders it at the Day, and he refuſes, and after brings an action for the Treſpaſs aforeſaid; this Award ſhall be a good Bar of the Action, becauſe that it was his own Fault that it was not paid; and he hath his Remedy for the Money. 1 *Rol. Abr.* 267.

15. Upon

15. Upon a Tender and Refuſal of what is to be done by one Perſon, he is intitled to what was awarded on his behalf.

16. As if Two ſubmit themſelves to the Award of *J. S.* of all Controverſies, and *J. S.* awards, that one ſhall pay 10 *l.* to the other at ſuch a Day, and that the other, upon the Receipt of the ten Pounds, ſhall make a general Releaſe to the other, without appointing any other Thing to be done by him, who ſhall have the Money, and not expreſſing that the 10 *l.* ſhall be in Satisfaction of Matters in Controverſy; and though it is objected, that if he, to whom the 10 *l.* is to be paid, refuſes to receive it, then he is not bound to make any Releaſe; and then nothing is to be done by him; and ſo the Award is but of one Part, and only at the Will of him, whether he will make a Releaſe; yet it was adjudged a good Award, becauſe when one is awarded to pay the 10 *l.* to the other, he is by Implication awarded to accept it; as if one had been awarded to pay 10 *l.* in Satisfaction of all Controverſies to the other; if the other refuſes to accept the 10 *l.* yet this is a good Award, becauſe he is implicitly awarded to accept it in Satisfaction; and this Judgment was ffirmed in Parliament, by the Advice of all the a Judges. *Mich.* 22 *Car.* 1. 1 *Rol. Abr.* 254, 255.

17. If a Sum of Money be awarded one of the Parties, and that they both ſhall give mutual Releaſes; if he who is to receive the Money refuſes it; yet upon a Tender and Refuſal, he is as much obliged to ſign a Releaſe, as if he actually received it. 1 *Salk.* 75.

Rule of *Niſi prius* to refer, an Award made, and Motion for an Attachment for Non-performance. It was inſiſted that the Arbitrators had not purſued their Authority, becauſe the Submiſſion confined the Award to be made in Writing indented, and

the

the Award produced was not indented. *Cur'*: It is a perfect immaterial Objection, and just the same as if the Submission had said the Award should be made on Gilt Paper; let an Attachment go. *Barnes* 41. *Pract. Reg. C. P.* 47.

SECT. IV.

An Award ought to be certain.

1. AN Award is in nature of a Judgment or Sentence, in which there ought to be Plainness, and nothing left for Collection or Inference, for it ought to contain the Judgment of the Arbitrator himself, and not of another upon his Words. *Yel.* 98.

Awards *now* receive a more favourable Interpretation than formerly. Bac. Abr. 135.

Fitz-gib. 270. Bur. Rep. 277, 278. 2 Atk. Rep. 504. See 2 Stra. 1024.

2. And therefore, if an Award be uncertain, it shall be void, for the Arbitrators are Judges of the Case; and the Award ought to be certain, so that thereby the Controversy be decided, and that for the Uncertainty it be not the Cause of a new Controversy. 5 *Co.* 78.

Award that all Actions are to cease amounts to a Release. Barnes 43.

3. If two submit all Matters in Controversy between them; and the Award is, that one shall pay the one Moiety to *J. S.* and the other the other Moiety *cujusdam Debiti*, due to *J. S.* by two Strangers, who were bound to the said *J. S.* at the Request of them Two; this is no good Award; because it does not appear within the Award, in what Sum they were bound, though it be averred in the Plea after; because it cannot be known what Sum they intended. Per *Dod.* and *Houghton* cont' *Montague.* But *Houghton* inclined, that he might have helped it by an Averment, that there was not any other Obligation besides this. 16 *Jac.* 1. between *Gray* and *Gray*, 1 *Rol. Abr.* 263.

4. If Two ſubmit all Controverſies concerning certain Land, and the Arbitrator awards that one ſhall enjoy the Land, and the other ſhall enter into an Obligation to him; this is a void Award, becauſe it does not appear of what Sum the Obligation ſhall be; for it ſhall not be imagined that he intended an Obligation according to the Value of the Land; and he cannot aſſign over his Power to the Parties themſelves, to aſſeſs the Sum. 5 *Co. Samon's* Caſe 77, 78.

5. If the Submiſſion be, that the Defendant ſhould give Security to the Plaintiff for the Payment of 16*l.* at Two ſeveral Days; and the Plaintiff for Breach ſays, that he did not give Security, nor pay the Money, the Award is void for Uncertainty, in not ſhewing what Security he ſhould give, whether by Bond, or otherwiſe; and every Arbitrament ought to be certain, that the Party may know what he is to perform. Adjudged in the *Exchequer-Chamber*, 10 *Jac.* 1. between *Thinne* and *Rigby*, *Cro. Jac.* 314, 315.

6. If there be a Contract or Covenant to give Bond for the Payment of a certain Sum of Money, without ſhewing of what Sum the Obligation ſhall be, it is good, and ſhall be intended of double the Sum; but an Award in ſuch a Caſe is not good, in regard the Arbitrators are to make an End of all Differences. 1 *Lev.* 88.

7. If, where an Obligation is for the Performance of a Thing of a certain Value, which appears in the Agreement, the Sum to be mentioned in the Obligation ſhall be proportionable to the Value; but in an Agreement, where any Thing of an incertain Value is to be performed, and it is agreed that a Bond ſhall be delivered (without expreſſing the Sum the Party ſhall be bound in the Obligation) for the Performance of the ſame; and if in an Action on the Caſe for Non-performance, the Defendant

fendant demurs, or a ſpecial Iſſue be joined, Judgment ſhall be for the Defendant, in regard it does not appear in what Sum the Party is to be bound; nor can it be made certain, becauſe the Thing to be performed is incertain, and therefore the Agreement incompleat; but it is otherwiſe, if a general Iſſue be joined. Between *Pleaſe* and *Palfrey*, 1 *Sid.* 270.

8. If Two ſubmit all Controverſies concerning the Right, Title and Poſſeſſion of 200 Acres of Land, called *Kelſtom Linge*; and the Arbitrators award, that in the Waſte Lands of the Town of *Kelſtom*, one ſhall have the Brakes there growing during his Life, paying to the other 2 *s. per Annum*, without giving any Name to the Land in the Award; this is a void Award, and it cannot be helped by an Averment, that the Lands where the Brakes grow, is the ſaid Land called *Kelſtom Linge* ſubmitted, and not other, nor divers, for he cannot expound the Intent of the Arbitrators. 1 *Rol. Abr.* 263.

9. If an Award be made between *A.* and *B.* touching certain Quarters of Malt, before delivered by *A.* to *B.* that *B.* ſhall pay to *A.* ſo much for every Quarter, as one Quarter of Malt was then ſold for; this is a void Award, becauſe it is not mentioned in what Place the Sale ſhould be; for perhaps in one Market or Place it was ſold for more than in another Market or Place, and therefore the Award is void for the Uncertainty. 1 *Rol. Abr.* 263.

10. If the Condition of an Obligation be, to perform the Award of *J. S.* between *A.* and *B.* of all Controverſies and Demands between them, *&c.* and an Award is made of the Premiſſes, *ſcilicet*, that *A.* ſhall permit *B.* to enjoy certain Leaſes of certain Land then in his Poſſeſſion, which were the Lands of *W. S.* and then the Inheritance of *A.*

he, *ſcilicet B.* paying the Rents, and performing the Covenants in the Leaſes, and that *B.* ſhall deliver true Copies of the Leaſes to *A.* made by the ſaid *W. S.* and that *B.* ſhall pay the Arrears of Rent due to the ſaid *A.* after the Purchaſe thereof made; this Award, as to the Payment of the Arrears, though it be averred, that there was 2 *s.* of the Arrears of Rent then due, is not good for the Uncertainty; becauſe it does not appear by the Award, how much Rent was due after the Purchaſe; for *B.* the Leſſee does not know when *A.* the Plaintiff purchaſed the Reverſion of *W. S.* nor hath any Means to know it, unleſs *A.* or *W. S.* will ſhew it him, which he cannot compel them to do. *Style* 365, 366.

11. If an Award be, that one of the Parties ſhall pay to the other ſo much as is due in Conſcience; this is a void Award. Between *Watſon* and *Watſon*, *Trin.* 23 *Car.* 1. *Style* 28.

12. If an Award be, that one ſhall pay Quit-Rents, and other ſmall Things, it is void for Uncertainty. *March* 144.

13. If an Award be, that one ſhall pay the other for certain Taſk-work and Day-work; this is a void Award, becauſe of the Uncertainty of the Sum he ſhould pay; and this cannot be helped by any Averment. *Mich.* 22 *Car.* 2. between *Pope* and *Brett*, 2 *Saund.* 292.

14. But if an Award be, that one ſhall acquit the other of an Obligation of 200 *l. aut eo circiter*, in which they are bound for the Payment of 105 *l. aut eo circiter*, to *B.* this is a good Award. *March* 18.

15. In an *Aſſumpſit* the Plaintiff declared, that whereas there had been ſeveral Differences between the Plaintiff and defendant, (but ſaid not touching what) they ſubmitted to the Award of *J. S.* who awarded *de & ſuper Præmiſſis*, that the Defendant ſhould

ſhould pay to the Plaintiff 30*l.* in Satisfaction of all Sums due to him, out of the Eſtate of *W.* &c. and, after a Verdict for the Plaintiff, Judgment was ſtaid, becauſe it did not appear that the Defendant was Executor, Adminiſtrator, or Truſtee for *W.* or that he had any Thing of his, or had ſubmitted in Behalf of him; and ſo there was no Conſideration to charge him for the Eſtate of *W.* 2 *Lev.* 235.

16. If an Award be, that one ſhall pay to the other 6*l.* the 21ſt of *May*, and 6*l.* at *Michaelmas* following; and that the other ſhall releaſe all his Right in ſuch Lands *ſuper predict' primum diem Maii* (omitting *viceſimum*) this is a void Award, becauſe there was not any firſt Day of *May* mentioned before. *Yelv.* 97.

17. If there be a Submiſſion of all Controverſies touching a Voyage to Sea, and an Obligation with Condition for Performance thereof; and an Award is made, that one ſhall pay his Part of the Charge of the Voyage, and ſhall allow his proportionable Part of the Loſs that ſhall come to the Ship by the Voyage, upon Account; and it is awarded farther of the other Part, &c. though this Award be of it ſelf uncertain; yet in as much as it may be reduced to a Certainty, it is good enough. *Mich.* 10 *Car.* 1. between *Beale* and *Beale*, 1 *Rol. Abr.* 251.

18. If there be a Submiſſion to the Award of *J. S.* ſo that it be made at or before the laſt Day of *April*, and *J. S.* upon the laſt Day of *April* makes an Award, that the ſaid Parties, within four Days after the ſaid Award, ſhould give to each other Releaſe to the Time of the Submiſſion; provided that if either of the ſaid Parties ſhould be diſcontented with the ſaid Award, and within twenty Days after the ſaid Award, ſhould pay to the other 10*s.* that then the ſaid Award ſhould be void; yet

this is a good Award; for the Proviſo to make it void, after the Execution of the Releaſes, is repugnant; and if by not making a Releaſe, either of the ſaid Parties hath forfeited his Bond, it cannot be helped, or become not forfeited by diſſolving the Award by Proviſo.

19. But if the Proviſo had been, to be performed within the ſaid four Days, the Award would have been void, becauſe no final End of the Controverſy, in as much as it is not certain, by Reaſon of the Condition, whether it ſhall be an End, or not? *Popb.* 16.

20. If an Award is made, that one of the Parties ſhould pay Money, and other ſhould make a Releaſe; provided that if one of them ſhould be diſcharged of any Arrears due unto Soldiers, by an Act of Indemnity, that then the Award ſhould be void; and by the whole Court, the Proviſo being void, the whole Award is void, becauſe intire; and the Whole being awarded to be void upon a ſubſequent Accident, what they have awarded *in Preſenti* is not good, neither is it conſonant to the Submiſſion (which is *in Preſenti)* to make the Award depend on a Thing *in Futuro.* 1 *Sid.* 59.

21. One Part of an Award was, that the Defendant ſhould pay the Charges of ſuch a Suit; and it was odjected, that this Award was void for Uncertainty; but it was held to be good enough, and certain enough, when the Attorney had made his Bill of Charges. *Cro. Car.* 383.

22. In Debt upon an Obligation to perform an Award, which was, That the Defendant ſhould pay unto the Plaintiff ſuch Coſts, as the Prothonotary of the Court in which the Action depended ſhould tax; and it was objected, that this was uncertain, and that the Prothonotary, by his Office, ought not to tax Coſts but upon a Nonſuit or Verdict, and that the Arbitrators could not oblige him to do any Thing

Thing in his private Capacity. But notwithſtanding, the Award was held good; for it is in the Power of the Parties to make themſelves liable to have Coſts taxed; alſo the Prothonotary is a publick Officer, and Judgment was given for the Plaintiff. Between *Worrel* and *Atworth*, 1 *Sid.* 358.

23. And *Note*, That it has been the conſtant Practice ever ſince, to award that one of the Parties ſhould pay ſuch Coſts of a Suit as a Maſter ſhould tax, and it has been held certain and good enough.

Award was to pay 28*s.* to *W.* the Plaintiff's Solicitor. Exception was taken that *W.* is a Stranger, and therefore ill, except in ſome Caſes where it appears that it is for the Plaintiff's Benefit, or to diſcharge Money owing by him, but that nothing of that appears in this Caſe, and therefore as to that the Award is ill. *Quod Curia conceſſit. Ld. Raym. Rep.* 123.

When Arbitrators award Coſts to either Party, they are to be taxed as between Party and Party, and not as between Attorney and Client, unleſs the Arbitrators expreſsly ſo award, as that the Plaintiff ſhall have all his Expences, or ſuch like expreſſion. *Caſ. Temp. Hardw.* 161, 162.

Award that Defendant ſhould pay what Coſts two Perſons named in the Award (who were not officers of any Court) ſhould appoint for *Coſts*; provided they are ſuch as a Maſter in *Chancery* would allow; was held ill, for they can only delegate their Authority in that Inſtance to one who the Court will take Notice underſtands it better than themſelves: Defendant had Judgment on Demurrer. 2 *Stra.* 1025. *Caſ. Temp. Hardw.* 181. but ſee *Barnes* 43.

Arbitrators awarded Coſts of Suit, *and of the Reference*, to be taxed by the Prothonotary; the

Court ordered Coſts to be taxed *to* the *Time* of *Reference*, but *not after*. 2 *Barnes* 54.

24. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleaded No Award; and the Plaintiff replied an Award, that he ſhould pay the Defendant 20*s.* upon Condition that each ſhould acquit the other of all Things ſubmitted, and that the Defendant ſhould pay the Plaintiff the Charge of a Suit now pending between them; and the Plaintiff gave the Defendant a Bill of Charges, and for Breach aſſigns, That the Charges amounted to 40*s.* of which he delivered a Bill to the Defendant, and he had not paid it; upon this the Defendant demurred, and two Exceptions were taken. 1. That the Award is not abſolute, but conditional, *ſcilicet*, that the Plaintiff ſhould pay the Defendant 20*s.* upon Condition that each ſhall acquit the other. 2. That the Award does not aſcertain what the Charges are, but refers them to a Bill to be given by the Plaintiff; *ſed per Cur'*: As to the firſt, on Condition they ſhall acquit, is an Award that they ſhall acquit; and as to the Second, the Charges are aſcertained by the Bill delivered. Between *Linfield* and *Feme*, 33 *Car.* 2. 3 *Lev.* 18.

25. In an Action on the Caſe for Performance of an Award, the Award was, That the Defendant ſhould pay unto the Plaintiff 12 *Guineas*, *and all ſuch Sums of Money as the Plaintiff had laid out or expended in or about the Proſecution of the Plea aforeſaid*, &c. and avers, that he had expended 11 *l. &c.* and it was objected, that this Award is uncertain, for that 'tis for the Defendant to pay all ſuch Sums of Money which the Plaintiff had expended in the Suit, and it doth not appear how much was ſpent, and no Perſon is aſſigned to reduce it to any Certainty; but if it had been, to pay all the Coſts of Suit, that might have been good; becauſe there is

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a proper Officer to tax the Coſts. But my Lord Chief Juſtice *Pollexfen*, with the reſt of the Court, held, that the Award was good, and that it had made an end of the Suit, ſo that the Court had no Authority to tax the Coſts; therefore after the Award no Judgment could be given as to that Matter, becauſe then there was no Suit depending; and ſo it would make no Manner of Difference, if the Word *Coſts* had been inſerted inſtead of the Word *Expences*; but here the Plaintiff had aſcertained the Expences by his own Averment, that he had expended ſo much, *&c.* which the Defendant might have traverſed, if he would. 1 *&* 2 *W. & M.* between *Hanſon* and *Leverſedge*, *Carth.* 156.

But ſee afterwards, where Part of the Award was, that the defendant ſhould pay the Plaintiff 71 *l.* 10 *s.* *& omnes Rationabiles expenſas*, which the Plaintiff *ſuſtinuiſſet circa ſectam Predict'*; and it was admitted that this Part of the Award was void, being wholly uncertain. 3 *Lev.* 413, 414. 6 *W.* 3. between *Bargrave* and *Atkins*.

26. An Award was, that one Party ſhould pay the other ten Pounds, and the Coſts of a Suit now depending in an inferiour Court, and then to give mutual Releaſes; and *per Cur'*, to pay ſuch Coſts as the Maſter ſhall tax, is good, for *id Certum eſt quod certum reddi poteſt*; but this is uncertain, and carries it further than has hitherto been allowed. But it was adjourned. 3 *Ann.* between *Winter* and *Garlick*, 1 *Salk.* 75.

But in the Caſe of *Dudley* and *Nettleford*, *H.* 13 *G.* where it was awarded, that the Plaintiffs ſhould pay the Coſts, and nobody was appointed to tax them, the court ſupplied it by ordering the Maſter to do it. *Stra.* 737.

27. If the Condition of an Obligation be, to ſtand to the Award of *J. S.* and he awards that one ſhall enjoy a certain Houſe, paying to the other

20 *s.*

20 *s.* yearly, if the Rent is not paid, the Condition is broke. *Cro. Eliz.* 211.

28. So if an Award be, that *A.* ſhall make a Leaſe to *B.* and that for this Leaſe *B.* ſhall pay to *A.* a certain Sum yearly, this is good. 4 *Bendl.* 15.

29. So where an Award was, that one ſhould keep and enjoy certain Goods, paying ſo much Money to the other; and it was held, that the Word *Paying* amounted to, and was the ſame Thing as that he ſhall pay. 1 *Sid.* 54.

30. If *A.* and *B.* ſubmit to the Award of *J. S.* and he awards that *A.* ſhall pay 20 *l.* to *B.* upon Condition that each of the Parties ſhall acquit the other of all Things ſubmitted, *&c.* this a good Award, and not Conditional, but an Award that they ſhall acquit one another. 3 *Lev.* 18.

31. If the Award be to pay Coſts in ſuch a Suit, brought againſt the Party for ſcandalous Words, it ought to appear by the Award, that the Words are Actionable. Between *Spignurel* and *Jene*, 1 *Sid.* 12. But ſee the next Caſe following, where this Caſe is cited; and the Court ſaid they were not ſatisfied with the Opinion, and that *Siderfin* was then a younger Reporter.

32. An Action for ſcandalous Words being ſubmitted to Arbitrament, the Arbitrators awarded the Plaintiff ſo much, *&c.* and it was objected, that the Plaintiff ſhould have ſhewn that he had Cauſe of Action, by alledging that the Words were Actionable; but it was held, that the Plaintiff need not ſhew that there was Cauſe of Action; for that is left to the Arbitrators, and they have Power to award Charges thereupon, though in Point of Law there was no Cauſe of Action; for the Parties have made the Arbitrators their Judges. 2 *Vent.* 242.

33. In Debt upon a Bond conditioned for Performance of an Award, which was ſet forth, and a

Breach

Breach aſſigned, and upon a Demurrer theſe Exceptions were taken.

34. 1ſt, That the Award recited, that the Parties were Jointenants of ſuch Land, and ordered they ſhould make Partition by mutual Conveyances, which was ſaid to be uncertain, and not making an end of the Matter, by ſhewing what Moiety, or Part, the one ſhould have, and what the other; to which it was anſwered and reſolved, that it was well enough; for whereas they were Jointenants, before, they would now become Tenants in common.

35. 2dly, It was objected, that could not be, for it was further awarded, the one ſhould have *Unam dimidiam Partem ſive medietatem*, which ſhews they intended ſomething more than a Tenancy in common, but left it uncertain; for *Dimidia pars* is a Moiety in Certainty, and *medietas* is a Moiety incertain.

36. But it was held by the Court, That *Dimidia Pars*, or *Medietas*, ſhall be reſpectively taken for a Moiety, divided or undivided, *ſecundum ſubjectam materiam*; as *medietas* of a Thing to be delivered, ſhall be underſtood a divided Moiety, becauſe it cannot be delivered unleſs it be divided; ſo *dimidia pars*, if it be ſuch a Thing as cannot be reduced to a divided Moiety, ſhall be underſtood a Moiety divided. 6 *Mod.* 231.

37. An Award was made concerning ſome Scaffolds, *&c.* which the Defendant had erected on his Wharf, and which were alledged to be a Nuſance to the Plaintiff; and the Arbitrators awarded that the Scaffolds, *&c.* ſhould be removed, but did not ſay by whom; and it was objected, that the indefinite Award was void for Uncertainty who ſhould remove them: And of his Opinion *Holt*, Chief Juſtice, ſeemed to be; but *Powel*, *Powys*, and *Gould*, clearly contrary; for when the Arbitrators

tors declare it to be a Nuſance, and that it ſhould be removed, who ſhould remove it but he on whoſe Ground it was; and though, in Point of Law, any Man may remove what is to his Nuſance; yet in Caſe of an Award, which is by Judges of Equity as well as Law, it muſt be intended that it was to be done by the Party on whoſe Ground it was. 3 *Ann.* between *Arnote* and *Breame*, 6 *Mod.* 244.

38. An Award was, That one of the Parties, he or his Executors, ſhould releaſe, *&c.* and my Lord *Holt* inclined to think, that it may be conſtrued, that *he and his Executors* ſhould releaſe. 1 *Salk.* 69.

39. An Award to pay ſo much Money as ſuch Land is worth, is void for Uncertainty. *Skin.* 248.

40. From the above Caſes it appears, that whatever is awarded to be done, muſt regularly be certain in itſelf, or ſuch as may be reduced to a Certainty by the Award; for the Law will not admit the Intent of the Arbitrators to be explained by any Averment, or by any Matter not contained in the Award itſelf. *Dyer* 242. 6 *Mod.* 244.

41. If Award be, that the Defendant pay a Sum of Money for the Plaintiff's Benefit to ſuch Perſon as the Plaintiff ſhall appoint to receive it, it was ſaid, *Arg.* that it would hardly be contended but ſuch Award would be good; and the Court was of the ſame Opinion, and gave Judgment accordingly, *Niſi, &c.* 2 *Barnard. Rep.* 291.

SECT.

SECT. V.

That the Award be final, ſo as to make an end of the Matters in Controverſy.

1. AS the very Scope and End of Mens entring into Submiſſions to perform Awards, is, that it ſhould be a final Determination of all Matters in Controverſy between the Parties; Care is to be taken that all the Matters controverted be determined with that Certainty, ſo as to anſwer this Purpoſe; or if the Award be of a particular Thing only, that it be particularly determined, ſo as to make a final end of it. 2 Stra. 1024.

2. But as the Caſes in the foregoing Section ſhew what kind of Certainty is ſufficient, or not, ſo as to make a final end of the Controverſy; and as in the 8th *Section* of this Chapter, the Caſes therein likewiſe ſhew how an Award may be good in Part and void for the reſt; by which it will be underſtood, that a Determination of a particular Thing may make the Award final; I ſhall in this Section only inſert ſuch Caſes as would not ſo properly come under either of the other two.

3. If the Condition be to ſtand to the final End and Determination of *J. S. Ita quod fiat de Præmiſſis*, and the Award is made concerning an Obligation, in which one is bound to the other, that the Obligee ſhall not proſecute, or cauſe to be proſecuted, any Suit againſt the Obligor, upon the ſaid Obligation, this is a good Award; though it was objected that this Award is not final, for that this Award does not extinguiſh the Duty, but it is only awarded that he ſhall not ſue upon it; and if the Duty is not extinguiſhed, it may be forfeited by Outlawry; but yet it was held to be a good Award; for it

ſhall be taken according to the Intent of the Arbitrators, which was to extinguiſh the Duty. 14 *Car.* 1: between *Milwood* and *Stokes*, 1 *Rol. Abr.* 540.

4. But it is ſaid, that if two have Actions one againſt the other, and the Award is, that each ſhall be nonſuit in his Action againſt the other, this is not good, becauſe it is not final, for they may bring new Actions for the ſame Matter. 19 *H.* 6. 36. *b.*

5. So it is no good Award that one ſhall diſcontinue an Action which he hath againſt the other, and that the other ſhall ſo do of an Action which he hath againſt him, becauſe it is not any final Determination of the Matters between them. 5 *H.* 7. 22.

6. But it is a good Award, that the Plaintiff in an Action ſhall make a *Retraxit*, for this is a good Bar. *Ibid.*

7. So is an Award that all Suits ſhall ceaſe. *Style* 110.

8. In Debt upon an Obligation for Performance of an Award, which was, that the Plaintiff ſhould not proſecute nor proceed in the ſame Term, in ſuch an Action; and it was held by the Court to be a good Award; and it was agreed that the Award being, that he ſhould not proſecute in ſuch an Action in the ſame Term, that the Entry of Continuance from Term to Term is not any Breach; and by two Juſtices, if one be obliged that he ſhall not continue ſuch a Suit, if he continue it by Attorney, it is a Breach of the Obligation; but if the Attorney enter the Continuance without his Privity, it is no Breach. Between *Gray* and *Gray*, *Cro. Jac.* 525.

9. It was awarded that all Suits ſhall ceaſe; and it was held by the Court to be a good Award, and final enough; and that the Awarding that all Suits ſhall ceaſe, amounted to a Releaſe, for that an A-

ward

ward may be pleaded in Diſcharge as well as a Releaſe. 2 *Mod.* 227, 228. 1 *Lev.* 58. S. P.

10. And afterwards it was an Exception taken to an Award, that it was awarded *that all Suits now depending* ſhould ceaſe; and it was inſiſted upon by *Parker*, that it amounted to no more, than that the Party ſhould be nonſuited, which is not final; he allowed that no new Suit could be brought whilſt theſe depended, becauſe theſe may be pleaded in Abatement; nor can theſe be proſecuted becauſe of the Award; but if either of the Parties die, new Suits may be proſecuted for the ſaid Cauſes, notwithſtanding this Award.

11. But it was anſwered and ſo reſolved, that the Awarding that all Suits ſhall ceaſe, is, that they ſhall for ever ceaſe; and it extinguiſhes the Duty; for if the Words had been, that all Actions ſhould ceaſe, the Duty had been gone; for if the Remedy be gone, the Right is gone; and the Word *Suit* is of a larger Extent and Senſe than Action; for by a Releaſe of Suits a Man may bar himſelf of an Execution, which he cannot do by Releaſe of Action. 6 *Mod.* 34.

12. An Objection was taken to an Award, that it was awarded, that *a Suit in Chancery ſhould be diſmiſſed*, which, as was urged, was ill, for that an Award ought to be final, and that a Suit in Chancery might be diſmiſſed upon Payment of Coſts, ſo as the Party might begin again; indeed, if the Diſmiſſing be abſolute, it is final; but if it be diſmiſſed, as is frequently done there, without Prejudice, the Party may begin again; and therefore an Award of Diſmiſſing a Suit in Chancery is incertain, and not final; but is like awarding that one of the Parties in a Suit at Law be nonſuited, which is void.

13. But the Court held, that though it were true, that the Awarding that one of the Parties

ſhould

ſhould be nonſuit, were void, as not being final; yet to award that a Suit ſhall be diſmiſſed, were different, and muſt be underſtood that it muſt ceaſe for ever; that is a ſubſtantial Diſmiſſion and Ceſſer, and not the Shadow of one; as if the Condition of a Bond be, to deliver up another Bond to be cancelled; and the Obligee, before the Day, puts the firſt Bond in Suit, and obtains Judgment thereupon, and at the Day tenders it to be cancelled, according to the Letter of the Condition of the ſecond Obligation; yet his Obligation is forfeited; and Diſmiſſing here is put in Latin *Dimittere*, with an *Anglice* to diſcharge; and to diſcharge a Suit is to releaſe it, *ideo* final. 1 *Salk.* 75. 6 *Mod.* 282.

14. The Arbitrators muſt make a final End of the Controverſy, before the Time allowed them to make their Award in is expired, for they cannot regularly reſerve any Power to themſelves. *Vide* Chap. V.

15. As if *A.* and *B.* ſubmit to the Award of *J. S.* ſo that he makes his Award before the 8th of *March*, and *J. S.* accordingly makes his Award, that *A.* ſhall pay to *B.* 30 *l. viz.* 10 *l.* at *Michaelmas*, 10 *l.* at *Chriſtmas*, and 10 *l.* at *Lady-Day*; and if before the ſaid laſt Payment *videretur* to the ſaid *J. S.* that *A.* was ingaged for the ſaid *B.* in any Debt not ſatisfied, that then the ſaid *B.* ſhould repay unto the ſaid *A.* ſo much Money as the ſaid Debt amounted unto; this Award is void, becauſe not final; for Part is reſerved to this future Judgment, which an Arbitrator cannot do. *Mich.* 18 *Jac.* 1. *Winch* and *Sanders*, *Cro. Jac.* 584.

16. But it is ſaid, that if the Award had been, that if *A.* ſhews any Bill of Debt to ſuch a Sum, that then this Sum certain ſhall be repaid, that it might have been a good Award. *Ibid.*

17. And *note*, that there is a Diverſity taken, where the Arbitrator reſerves to himſelf a Power to

do

do a judicial, and where a miniſterial Act; and that the firſt is void, though the latter may be good. *Palm.* 146.

18. And where the Arbitrators reſerve to themſelves a Power within their Time, and over a Matter ſubmitted, the Award is not final, and ſo void; but when the Power goes to a Matter not within the Submiſſion, the Power is void, and the Award good. *Palm.* 110.

19. And if there be a Submiſſion to the Award of *J. S.* ſo that it be made at or before the laſt Day of *April*, and *J. S.* upon the laſt Day of *April*, makes an Award that the ſaid Parties, within four Days after the ſaid Award, ſhould give to each other Releaſes to the Time of the Submiſſion; provided that if either of the ſaid Parties ſhould be diſcontented with the ſaid Award, and within twenty Days after the ſaid Award ſhould pay to the other 10 *s.* that then the ſaid Award ſhould be void; yet this is a good Award; for the Proviſo to make it void after the Execution of the Releaſes, is repugnant; and if by not making a Releaſe, either of the ſaid Parties hath forfeited his Bond, it cannot be helped, or become not forfeited by diſſolving the Award by Proviſo. *Poph.* 15, 16.

20. But in this Caſe it is ſaid, that if the Proviſo had been to be performed within the ſaid four Days, the Award would have been void, becauſe no final End of the Controverſy, in as much as it is not certain, by Reaſon of the Condition, whether it ſhall be an End, or not. *Ibid.*

Where Matters are ſubmitted, they ought to Award all abſolutely, without referring to any future Examination; and that he knew but one Caſe where Arbitrators may refer to a future Act, and that is, where they award the Payment of ſuch Coſts, as an Officer of the Court ſhall tax, which

has been allowed *per Holt, ſed adjurnatur.* 12 *Mod.* 139.

Where the Submiſſion is ſimply without Condition, an Award of Part is good. 12 *Mod.* 585.

Though Awards ſhould be certain and final, yet if they are as certain and final as the Nature of the Thing will bear 'tis ſufficient; by 3 J. *contra* Page J. *Fitz-gib.* 272. *Barnard. B. R.* 463. 2 *Stra* 903.

SECT. VI.

An Award muſt appoint the doing ſomething Beneficial to each Party.

1. IT has been always held neceſſary, that Awards ſhould be mutual, *i. e.* appoint the Doing of ſomething beneficial to each Party, in Appearance at leaſt.

2. But herein it muſt be obſerved, that the Caſes in the old Books differ from our more Modern Reſolutions and Stile, more from our Modern Practice; and that it muſt appear now, that it was not poſſible for the Party, who complains of Inequality, to have reaped the leaſt Advantage by the Award, and that nothing at all was awarded to be done unto him; for the Arbitrators being Judges of the Parties own chuſing, it will not be preſumed but that they have done each of them Juſtice.

3. It muſt likewiſe be obſerved, that let the Award be ever ſo ſevere on one of the Parties, as by Awarding him to pay 1000 *l.* when there was but 100 *l.* due, if there be any Thing awarded to be done unto him, as the paying him a Penny, or giving him a Releaſe; the Award will be held equal and advantagious in Law; and there can be no Remedy againſt it, but in Equity.

4. If a Treſpaſs be put to Award, if the Arbitrators award nothing to be done by him who did the Treſpaſs, it is worth nothing. 43 *E.* 3. 28. *b.*

5. So

5. So if they award that he ſhall wage his Law, that he his Not guilty, and that he ſhall be quit; and he does it accordingly, without Satisfaction, it is not good. 46 *E.* 3. 17. *b.*

6. So if a Treſpaſs for Taking his Cattle be put to Award, if the Arbitrators award that the Owner ſhall have his Goods again; this is not good, becauſe there is no Satisfaction awarded for the Damage of the Taking and Detinue. 45 *E.* 3. 16.

7. So it is no good Award, that one ſhall go to *Rome* or *Paul's*; for this is not any Advantage. 9 *E.* 4. 44.

8. It is no good Award, that one ſhall make a Releaſe to the other of Land, in Satisfaction of an Action, if he to whom the Releaſe is to be made, had nothing in Land at the Time, for then it is no Advantage to him. 9 *E.* 4. 44. *b.*

9. But if a Man makes to me a Releaſe of certain Land, of which I am ſeiſed, and after he gets the Releaſe again, and after he and I ſubmit all Matters to the Award of *J. S.* who awards, that he ſhall deliver to me all the Evidences concerning the Land, in Satisfaction of a certain Action; this is a good Award, though theſe are my own Evidences; for this is an Advantage to me, to have them without Suit. 9 *E.* 4. 44.

10. In an Action of Debt upon a Bond, conditioned for the Performance of an Award, the Defendant pleaded, that the Arbitrators did make an Award, that the Defendant ſhould pay to the Plaintiff 3100 *l.* and ſhould give to the Plaintiff a general Releaſe; and pleaded that he had paid the Money and given a Releaſe accordingly, but did not ſhew what, on the Part of the Plaintiff, was awarded to be done; and the Plaintiff replied, without ſhewing the other Part of the Award in his Replication, and took Iſſue, that the Defendant had not paid the Money; and the Defendant put

in an inſufficient Rejoinder, upon which the Plaintiff demurred.

11. And it was held by the Court, that the Plaintiff could not have Judgment, it appearing by the Pleading to be but an Award of one Side only; but if the Plaintiff would have helped himſelf, he ought to have ſhewn the other Part of the Award before he had taken Iſſue; but the Court would not give Judgment for the Defendant, but ſuffered the Plaintiff to diſcontinue, becauſe they apprehended it to be only a Trick in Pleading; for which the Chief Juſtice reprehended *Sanders*, who excuſed himſelf, by Reaſon of the Severity of the Award. *Mich.* 21 *Car.* 2. between *Veal* and *Warner*, 1 *Saund.* 326.

12. When a Thing appeared by the Submiſſion and Award to be certain, and due to one of the Parties, it has been held, that awarding Part or Parcel of ſuch Thing they aſcertained, was not good.

13. As an Award to pay Parcel of a Debt due is not good. 45 *E.* 3. 16.

14. So an Award that the Owner ſhall have Parcel of his own Goods, is not good. 45 *E.* 3. 16.

15. So if *A.* and *B.* ſubmit all Controverſies between them concerning a Wine Licence, and the Arrears of certain Rent; and the Arbitrators reciting 15 *l.* to be due to *A.* make an Award that *B.* ſhall pay 7 *l.* 10 *s.* to *A.* in Satisfaction of Part the ſaid 15 *l.* and ſhall aſſign the Wine Licence to *A.* this is a void Award as to the Aſſignment of the Wine Licence. *All.* 52. But *Bacon* held, that it ſhould be in Satisfaction of the other 7 *l.* 10 *s.*

16. But this Diſtinction has not been ſo ſtrictly adhered to of later Days; for it has been reſolved,

17. That though it appears by an Award, that 72 *l.* was in Controverſy for Rent due, and fifty is awarded

awarded in Satisfaction thereof, and general Releaſes to be given; yet this is a good Award; for though it did not appear, that other Matters were in Controverſy, yet perhaps the Arbitrators did conſider other Matters; and 'tis but unreaſonable for him to find fault in whoſe Caſe this Award is made. 2 *Mod.* 303, 304.

18. If the Arbitrators reciting, that whereas there were ſeveral Differences between the Plaintiff and the Defendant concerning a Houſe, and divers Elms, and Arrears of Rent, they, to make a final End of all, award the Defendant to pay to the Plaintiff 4 *l.* for all the ſaid Arrears of Rent; this is a good Award; for either it ſhall be intended, that the other Matters were otherwiſe determined; or when the Award ſays, to end all Differences, it ſhall be intended that the 4 *l.* was given in Satisfaction of all. *Trin.* 16 *Car.* 2. between *Hopper* and *Hacket*, 1 *Lev.* 133.

19. If *A.* and *B.* ſubmit to the Award of *J. S.* who makes his Award, that *A.* ſhall pay to *B.* 15 *l.* which the ſaid *J. S.* did adjudge the ſaid *B.* to have ſuſtained in Coſts and Damages, by Reaſon of a Suit without Cauſe commenced by *A.* againſt *B.* and that all Suits and Differences between them ſhall ceaſe; this is a good Award; for by this Award *A.* is not ſubject to have Coſts taxed againſt him at the Prayer of *B.* and therefore the Award is not of one Side only; though it was objected, that *B.* had no Advantage by Staying his own Suit, and paying 15 *l.* Coſts; and that it did not appear, that there were any other Differences between them. 2 *Vent.* 221.

20. It is a good Award where each Party is indebted in 40 *s.* the one to the other, that the one ſhall be quit againſt the other, for there is a ſufficient Satisfaction. 19 *H.* 6. 37.

21. If an Award be, that all Controverſies ſhall ceaſe, and that one ſhall give 12 *d.* to the other; this is a good Award, though the other hath nothing given to him; for it may be, that he hath done a greater Treſpaſs than the other. 1 *Rol. Abr.* 254. 1 *Lev.* 58. the like Point adjudged.

22. If an Award be *de & ſuper Premiſſis*, that each of the Parties ſhall make a Releaſe the one to the other, of all Matters till the Award; and that one of the Parties ſhall pay 10 *l.* to the other at a Day certain, *& quod partes Predicte continuarent amantes & amici ut in Priori tempore*; this is a good Award; for though it be admitted, that the Award, as to the general Releaſe till the Award made, is void (though the Court inclined *econtra* as to this Point) yet the Award for the Payment of 10 *l.* is an Award of both Parts, becauſe it ſhall be intended to be in Satisfaction of all Matters between them, eſpecially in this Caſe, where it is ſaid, that the Parties ſhall be Friends, *ut in Priori tempore.* 1 *Rol. Abr.* 254.

23. All the Matters awarded to be done on the one Side, were pardoned by the General Pardon; and the Award was notwithſtanding this, held good. 1 *Sid.* 178.

24. And *note*, that where there are ſeveral Parties, ſomething beneficial muſt be awarded to each.

25. As if three Perſons, *ſcilicet A. B.* and *C.* of the one Part, and *D.* of the other Part, ſubmit themſelves to the Award of *J. S. ita quod, &c.* and he makes an Award between *A.* and *B.* of the one Part, and *D.* of the other Part, and makes no Award between *C.* and *D.* this is not good. 1 *Rol. Abr.* 540.

26. But the Condition of the Submiſſion may be ſuch, as that it may not be requiſite to make an Award between all the Parties.

27. As

27. As if *A.* and *B.* of the one Part, and *C.* of the other Part, ſubmit themſelves to the Award of *J. S.* of all Matters between them, *J. S.* may make an Award of any Matter between *A.* only and *C.* though *B.* hath nothing to do therewith; for the Submiſſion ſhall be taken diſtributively. 8 *Co.* 98.

28. And *note*, that where one Perſon ſubmits for another, regularly there muſt be ſomething advantagious awarded to be done to him on whoſe Behalf the Submiſſion was. *Carth.* 413.

29. If *A.* and *B.* ſubmit to the Award of *J. S.* who makes an Award, that *A.* ſhall be bound with ſuch Sureties as *B.* ſhall approve, for the Payment of 100 *l.* to *B.* and that thereupon they ſhall ſeal mutual Releaſes to one another; this is a void Award, becauſe *B.* muſt firſt approve of the Security before, and without which the Releaſes are not to be given; ſo that it is but an Award but of one Side. *Hill.* 1 *W. & M.* between *Thirſby* and *Helbot*, 3 *Mod.* 272.

30. A Thing may be beneficial to the Party, although it be awarded to be done to a Stranger.

31. As if an Award be, that *A.* ſhall pay Money to the Servant of *B.* this is good. 3 *Leon.* 62.

32. But then it muſt appear, that the Servant received it to the Uſe of his Maſter. *N. Dier* 242.

33. So if *J. S.* and *J. D.* are bound in 20 *l.* at my Requeſt, and the Requeſt of *W. N.* and afterwards there is a Controverſy between us Two, which of us ſhall pay this Money, among other ſuch Bargains between us; upon which all Matters in Controverſy are ſubmitted to Arbitrament; and the Arbitrator awards, that I ſhall pay one Moiety of the Money with the Uſe, and *W. N.* the other Moiety to the Obligee; this is a good Award, though he be a Stranger to whom it is to be paid by thoſe who ſubmitted themſelves, for

here appears to be an Advantage to the Parties. 1 *Rol. Abr.* 247.

34. In Debt upon a Bond, the Defendant prayed *Oyer* of the Condition, which was for performing the Award of *J. S.* and pleaded *Nul agard fait*; and the Plaintiff replied, and ſet forth an Award, which was, that the Plaintiff and Defendant ſhould pay each a certain Sum yearly to *A.* for the Uſe of Mrs. *Bird*, their Mother. *Broderick* took an Exception to the Award, that this was to award a Thing to be done to a third Perſon, who is a Stranger to the Submiſſion, and conſequently of a Matter out of the Power of the Arbitrators; but *Holt* Chief Juſtice was of Opinion, that a general Award of Money to a Stranger was good; for it ſhall be intended the Submittants were bound as Truſtees, or were liable to pay the ſame; and the Payment ſhall be intended for their Benefit, unleſs the contrary appear; but *Powel* was of a contrary Opinion, and he ſaid it muſt appear to be for their Benefit; and it ſhall not be ſo intended, unleſs it does appear; but in the principal Caſe he held, that it ſhould be intended to be for their Benefit, or rather that it appeared to be ſo, becauſe the Payment was to the Uſe of the Mother; but no Judgment was given. 1 *Salk.* 74.

SECT. VII.

An Award muſt appoint the Doing of a Thing that is reaſonable, poſſible, and lawful.

1. IT has been often obſerved, that the Arbitrators being Judges of the Parties own chuſing, the Law will not countenance nor regard any Complaints, which may be made with Reſpect to the Unrea-

Unreaſonableneſs or Severity of the Award, unleſs it appears to be ſo unreaſonable or ſevere as to be againſt Law, or impoſſible to be performed; and therefore it is, that we have but few Caſes, wherein it has been attempted to ſet aſide the Award barely on this Account; however, it is ſaid that,

2. If an Award be, that one ſhall ſerve the other two Years in Satisfaction of an Action, he is not bound to perform it. 9 *E.* 4. 44.

3. If there be a Submiſſion of all Controverſies between the Parſon of *A.* and the Pariſhioners there, and the Arbitrators award, that the Pariſhioners at all Times ſhall give Notice to the Parſon, when they ſhear their ſheep, ſo that the Parſon or his Servants may be there, it is a good Award; for the Notice muſt be given at the Parſonage, where, by Intendment of Law the Parſon is always reſident; *per Croke*: But *Hutton* held, that the Award was void, becauſe, as he ſaid, it was unreaſonable that the Pariſhioner muſt find the Parſon *ubicunque, &c.* to give him Notice; but it was adjudged afterwards, according to the Opinion of *Croke*, between *Mudy* and *Oſam*, *Lit. Rep.* 30.

But though the Courts of Law are not willing to give any Countenance to Complaints founded barely on the Unreaſonableneſs or Severity of the Award; yet it is otherwiſe where the Award is impoſſible to be performed, or where it is againſt Law.

4. As if the Arbitrators award *J. S.* to pay a Sum of Money at a Day paſt, it is void, and the Condition is ſaved. 8 *E.* 4. 1. *b.*

5. So if it be awarded to turn the River of *Thames*, to releaſe all Right in the Manor of *A.* when in Truth there is no ſuch Manor. 22 *H.* 6. 19.

6. So if the Award be, that one ſhall command the Juſtices *de Banco* to make him to levy a Fine before

before a certain Day; this is void; becauſe it is not in his Power. 19 *E.* 4. 1.

7. If Two ſubmit themſelves to the Award of *J. S.* for the Title of certain Copyhold Land, and *J. S.* awards that one, *ſcilicet A.* ſhall pay to the other, *ſcilicet B.* 6 *l.* upon the 21ſt Day of *May*, and 6 *l.* at *Michaelmas* next enſuing; and that *B.* ſhall releaſe to *A.* all his Right in the Copyhold, *ſuper predict' primo die Maii*, omitting *viceſimo*, and awards over, that he ſhall make farther Aſſurance within three Days after, *&c.* this a void Award; for the Award for Making of the Releaſe *ſuper pred' primo die Maii* is void, there being no ſuch Day before-mentioned; and it appears that the Releaſe at the ſaid Day ſhould be the principal Conſideration of his Part, who ought to make it; and then the Reſt of the Award for further Aſſurance, which is good, is not ſufficient, this being but Part of the Conſideration, and Award of his Part. 1 *Rol. Abr.* 254.

8. But if the Thing to be performed be poſſible, though it appear extream difficult, yet the Party is bound to perform it.

9. And it is ſaid, that if one be awarded to go to ſuch a Place, and bring from thence a certain Thing which is not there; yet the Party is obliged to convey it firſt to the Place, and then bring it from thence. 9 *H.* 7. 15.

10. An Award that one ſhall pay 20 *l.* where he hath not 20 *d.* or twenty Tun of Wine, where he hath not one, is a good Award. 19 *E.* 4. 1.

11. It is ſaid in the Year-Book, 18 *E.* 4. 21. that if an Award be, to make an Obligation to another immediately after the Award; this is void; for a Space is requiſite.

12. But otherwiſe it is, if he awards that one ſhall make a Feoffment to the other of one Acre, and ſhall immediately after deliver the Charters; this

this is good; ſo if it be, that he ſhall make an Obligation, and immediately after pay the Money; for this is poſſible. 18 *E.* 4. 21.

13. But the Law ſeems to be well ſettled as to this Point; for it has been adjudged, that if an Award be to pay Money, without mentioning Time or Place, it muſt be intended immediately; and yet good. 2 *Brown.* 311. And *per Holt* Chief Juſtice where no Time is appointed, it muſt be done in convenient Time, for the Law ſupplies it; ſo, if there muſt be a Requeſt, the Law ſays it muſt be in convenient Time after Requeſt; if there needs no Requeſt, but there muſt be a Tender, that muſt be likewiſe in convenient Time. 1 *Salk.* 69.

14. If an Award be, that one of the Parties ſhall kill, ſteal, forge a Deed, or the like, it is void. *Co. Lit.* 206.

15. If it be awarded, that Money ſhall be paid to an Infant, and that he ſhall make a Releaſe; it is void; for the Infant's Releaſe is not good in Law. 1 *Jon.* 165.

16. An Award that one of the Parties ſhall do a Thing out of his Power, as to deliver up a Deed which is in the Cuſtody of *J. S.* is void; Agreed *per Cur'.* 12 *Mod.* 585.

SECT. VIII.

Award void in Part, and good for the Reſt; and void in Part, void for the Whole.

1. THE moſt prevailing Diſtinction to be met with in our Books, relating to the Awards being void in Part, or in the Whole, is where the Submiſſion is conditional, or with an *Ita quod fiat de* See 2 Barnard. B. R. 460.

de Premiſſis (as it is called) and where it is abſolute, and enumerating ſeveral particular Matters in Controverſy.

2. As in *Baſpole's* Caſe, 8 *Co.* 98. where it is held, that if the Submiſſion be conditional, or with an *Ita quod*, the Award muſt be made of all ſuch Matters as the Arbitrators had Notice of; otherwiſe it will be void for the Whole.

3. But if the Submiſſion be abſolute, or without any ſuch conditional Clauſe, then the Arbitrators may make an Award of any Part or Parcel of the Matters in Controverſy; and it will be good for ſuch Part. *Ibid.*

4. But it does not ſeem that it is upon the above Diſtinction, that Awards are now held to be good in Part, and void for the Reſt; for it is a ſtated Rule concerning Awards that are ſaid to be *de & ſuper Premiſſis.*

5. That if the Words uſed in them be in their Nature more comprehenſive, and ſo extenſive to Things not within the Submiſſion; yet they ſhall be intended, that there was no other Matter between the Parties for them to lay hold on, but what was ſubmitted, if the contrary be not ſhewn; ſo *e converſo*, if the Words are more narrow and leſs comprehenſive, than to take in all the Matter of Submiſſion; yet it ſhall be intended, that no more was in Controverſy, than what the Words naturally comprehend, if the contrary be not likewiſe ſhewn.

6. And though this Rule has prevented in a great Meaſure Awards from being void on this Account, yet have they been often held good for Part, and void for Part, when they could not be ſaid to come within this Rule.

7. And it appears, that Awards (though the Submiſſion was conditional) have been held good, though the Arbitrators made an Award of Part of the

the Matters in Controverſy, of which they had Notice, eſpecially if they awarded general Releaſes. 1 *Saund.* 32.

8. And that where an Award was made of the Whole, and Part happened to be good, and Part void; yet it has been held good for that Part which was well awarded, and void for the Reſt; eſpecially if that good Part did not depend on that which was void, as appears by the following Caſes.

9. If upon a Submiſſion by *A.* and *B.* of all Suits between them concerning certain Tithes, the Award be, that *A.* ſhall pay to *B.* ſuch a Sum of Money, and that *B.* ſhall ſuffer all Suits to be diſcontinued which he hath againſt *A.* where he hath other Suits which do not concern the ſaid Tithes; by which the Award is void for this; yet the Award is good for the Reſt; for this is not ſo entire as a Releaſe. Adjudged *in Cam. Scac.* 1 *Rol. Rep.* 362.

10. If the Submiſſion be of all Matters depending, and the Award is, that he ſhall not proſecute any Action depending or ariſing, till the Award made, where there are mean Actions depending between the Submiſſion and the Award, by which the Award is void for theſe; yet the Award is good for thoſe which are ſubmitted; becauſe this is not ſo entire, but that this Part of the Award, which is good, may be performed. Between *Sayer* and *Sayer*, 1 *Rol. Abr.* 258.

11. If the Submiſſion be of all Matters depending, *&c.* and the Award is, that one, *ſcilicet A.* ſhall pay to the other, *ſcilicet B.* 1000 *l.* at ſuch Days, *&c.* and further awards, that all Actions, Controverſies and Matters in Difference whatſoever, between the ſaid Parties, preſently ſhall ceaſe, determine, and be void; and it is further awarded, that each Party ſhall make general Releaſes of all Matters and Demands between them till ſuch a Day, which, by Admittance, comprehends the Ob-

ligation of Submiſſion; yet, although this Award is void as to the Releaſe, becauſe, if it ſhould be made, it would releaſe the Obligation of Submiſſion; yet the Award is good, in as much as there is an Award of both Sides, *preter* this, *ſcilicet* the Payment of the 1000 *l.* and alſo that all Matters in Controverſy between them ſhall ceaſe, which is good; and ſo the Award of both Parts, and Recompence to them. 1 *Rol. Abr.* 258, 259.

12. In Debt on an Obligation to perform an Award, and in the firſt Part of the Award 'tis awarded, that all Suits and Controverſies ſhall ceaſe, *&c.* and though in all the Award afterwards nothing is well awarded, but only on one Part; yet it was agreed by the Court, that this is a good and mutual Award on the firſt Part only. Between *Harris* and *Knipe*, 1 *Lev.* 58.

13. In an *Aſſumpſit* for the Performing an Award, the Defendant pleaded, that the Submiſſion was conditional, and that 4 *l.* was due to him for Fees as an Attorney, of which he gave Notice to the Arbitrators; but that they notwithſtanding awarded him to pay 6 *l.* and that each Party ſhould give mutual Releaſes; and though it was objected, that the Submiſſion being conditional, or with an *Ita quod*, they ſhould have made an Award of all that was notified to them; but in this Caſe it was held to be good enough; for they having awarded Releaſes, the Award was thereby mutual, and perhaps they did not deem this a juſt Debt. Between *Birks* and *Trippet*, 1 *Saund.* 32.

14. If *A.* and *B.* ſubmit to the Award of *J. S.* and he awards that *A.* ſhall pay to *B.* 10 *l.* and that *B.* ſhall pay to *A.* the Expences at the Making the Award; and that, upon the Performance of the Whole, they ſhall make to one another general Releaſes; this is a good Award; for the Releaſes ought to be made upon the Performance of that

which is well awarded, and not ſtay till the Performance of that which is void. 2 *Lev.* 3. Same Point adjudged. 3 *Lev.* 413.

15. If in an Action of Debt upon an Award, the Plaintiff declares, that the Arbitrators did make an Award, that the Defendant ſhould pay unto the Plaintiff 10 *l.* this is a good Declaration, though nothing is ſhewn to have been awarded on the other Side; for it is ſufficient for the Plaintiff to ſet forth that Part of the Award which intitles him to his Action. 1 *Leon.* 72.

16. If the Condition of an Obligation be to perform an Award, and the Award is, that the Obligor and a Stranger ſhall pay to the other Party 10 *l.* though this is void as to the Stranger, yet it is good as to the Obligor, and he is bound to perform it. 1 *Rol. Abr.* 244.

17. If the Arbitrators award, that one ſhall make an Aſſurance of certain Land within the Submiſſion, to the other and his Wife, where the Wife is a Stranger to the Submiſſion; and therefore the Award is void as to her; yet the Award is good for the Reſt; for he ought to make the Aſſurance to the Party, the Huſband. 1 *Rol. Abr.* 259.

18. So if an Award be, that one ſhall make a Leaſe for Life to the other, the Remainder to a Stranger in Fee; though as to the Remainder this is a void Award; yet it is good as to the particular Eſtate. *Cro. Eliz.* 758.

19. If Two ſubmit themſelves to the Award of *J. S. ita quod fiat* before *Michaelmas*, and the Arbitrators award that one ſhall pay 5 *l.* to the other for ten Loads of Wood, and awards ſeveral other Matters for other Things; and after this Award, if he that is to pay it, can diſprove, or better prove the Payment of any of the ſaid Sums before them, or of any of them, before the ſaid Feaſt of *Michael*; then

then ſo much as is proved ſhall not be paid at the ſaid Feaſt; this is a good Award; for the firſt Part is good, and ſo thereby the Authority of the Arbitrators ended, and then a Reference to Proof or Diſproof is meerly void. *Hob.* 218.

Submiſſion of all Matters to the Time of the Award; the Award was made in *October*, that one of the Parties ſhould releaſe all Actions in *December* following; *per Cur'*, 'tis good, unleſs it ſhould be ſhewn, that ſome new Cauſe of Action intervened. 3 *Vin. Abr.* 48. *pl.* 34.

An Award to releaſe all Matters to the Time of the Award, has been held good for a long Time, (though Anciently otherwiſe) becauſe it ſhall not be intended, unleſs the contrary be ſhewn, that any other Matter aroſe, between the Submiſſion and making the Award, and if no Matter did ariſe, the Arbitrator has awarded no more than he ſhould do; and ſince that a ſecond Reaſon has been added, that ſuppoſing other Matters to have ariſen, yet as to that, the Award is void; the general Words being to be expounded of all Matters in Controverſy at the Time of the Submiſſion, and as to other Matters ariſing ſince, to be void; and if in ſuch Caſe, the Party ſubmitting to the Award, ſhould make a Releaſe to the Time of the Submiſſion, it would be a good Performance of the Award. 12 *Mod.* 116, 117.

Award was that the Defendant pay 10 *l.* in full of all Demands, and that the Plaintiff releaſe to him, *&c.* The Court held, that if the Plaintiff would not receive the 10 *l.* becauſe he would not be obliged to releaſe when the Defendant tendered, and he refuſed, he was as much obliged to releaſe upon the Tender and refuſal, as if he had actually received the Money. *Salk.* 74, 75. *pl.* 14.

The Arbitrators awarded the Bonds of Submiſſion to be ſurrendered. It was objected that this exceeded

exceeded their Authority; and *Holt* Chief Juſtice held it void; for they would not award any Thing concerning them. Ld. *Raym.* 553.

Where the Submiſſion is ſpecial of all Controverſies between the Plaintiff and Defendant as Adminiſtrators, *&c.* and the Award is, that they ſhall execute mutual general Releaſes according to the Extent of the Submiſſion; it was held by *Holt* Chief Juſtice, that the ſpecial Words of the Submiſſion explain the generality of the Award. Ld. *Raym.* 533, 534.

Submiſſion was of all Actions, *&c.* between the Plaintiff and Defendant. In Debt on the Bond, the Defendant pleaded no Award; the Plaintiff replied, and ſet forth an Award of all Actions beween the Plaintiff and Defendant and his Wife, and that the Defendant was to pay the Plaintiff 20 *l.* in Satisfaction of Law-Charges due to him by the Defendant's Wife, as Executrix of, *&c.* It was moved in arreſt of Judgment, that the Submiſſion ſhould have been of all Actions between the Plaintiff and the Defendant and his Wife; but it was held that it was good as it is, becauſe upon the Defendant's Inter-marriage with his Wife, who was the Widow and Executrix of her former Huſband, the Plaintiff had an immediate Demand on him; and the Court being of that Opinion, held the Award good; and ſo the Judgment was affirmed. 8 *Mod.* 212.

Where Arbitrators direct that an Application ſhall be made to Parliament to confirm their Award, ſuch Award is not binding, unleſs an Act of Parliament be applied for, and obtained purſuant to ſuch Direction. 2 *Eq. Caſ. Abr.* 93. *pl.* 7. 2 *Atk. Rep.* 182. *pl.* 157. *S. C.* but not *S. P.*

Till King *James* the Firſt's Time the Law was held all along, that an Award void in Part was void *in toto*, but then, as it appears in *Hob.* and *Hutt.* that an Award might be void in Part and good in

Part; *per Holt* Chief Juſtice. 12 *Mod.* 534. Ld. *Raym.* 715.

A Difference taken where the Thing to be done on one Side is only applied to one particular Thing of the other Side, there though the Award be void in other Parts, it may be good in that Part; *ſecus* where a particular Thing of one Side is applied by the Award to all that is to be done of the other Side, if any of thoſe Things be ill awarded the Award cannot be good for the Reſt; *per Powel* Juſtice. 12 *Mod.* 587.

And if an Award were, that one of the Parties with his Wife and Son join in a Conveyance to the other, and the other pay him 100 *l.* that award is good as to a Conveyance to be made by himſelf, and if that only had been awarded for the 100 *l.* it had been well; but ſure ſuch Award would be wholly void; for the other was to have had a Title made to him from the Party, his Wife and Son, and it would be unreaſonable if it were that one ſhould be obliged to pay his Money, and not have ſuch Title made to him as the Arbitrators deſigned; *per Powel* Juſtice. 12 *Mod.* 587.

It has been often reſolved, that if an Award be void in Part, as being only *Ex parte*, yet if it be mutual for another Part it ſhall be good for that Part; *per Powel* Juſtice, and he cited 10 *Rep.* 131. *b. Oſborn's* Caſe, where if an Award be of ſome Matter within the Submiſſion, and for that void as to that Part, and though it appears by the Award that it deſigned both ſhould be Recompence of what is to be done of the other Side, yet if there be ever ſo ſmall a Matter to make it mutual, it ſhall ſtand for the Matter within the Submiſſion; but he ſaid, that this was *Durus Sermo*, and that Judgment was after reverſed upon a Writ of Error, and that the Rule put there will not hold of the Extent which *Coke* gave it. 12 *Mod.* 587.

Though

Though an Award may be void in Part and good for the Reſt, yet this muſt not be when it is void in that Part that concerns the Juſtice of the Award; *per Parker* Chief Juſtice in delivering the Opinion of the Court. 10 *Mod.* 204.

One recovered 90 *l.* Damages in Waſte, and then the Matter is ſubmitted to Reference; and it is awarded that the Defendant ſhould at one Time pay 10 *l.* to the Plaintiff, and that at another Day he ſhould pay him 15 *l.* and that for Payment thereof another and the Defendant ſhould become bound in a Bond; this being good in Part, though void for the Reſt, was held good; but *Powel* Juſtice who cited the Caſe, ſaid ſure that was hard, and would not paſs at this Day. 12 *Mod.* 587.

An Award of a Covenant to indemnify againſt the Acts of a third Perſon, and the Coſts and Damages therein, is void. Admitted. *Arg. Fitz-gib.* 270.

Motion for an Attachment for Nonpayment of Money awarded under a Reference *per Regulam Cur'*. Defendant ſhewed for Cauſe, that the Arbitrators being by the Rule confined to ſtate Plaintiff's Demand only, were debarred from the Conſideration of Defendant's Demand on Plaintiff: That Defendant having brought his Action againſt Plaintiff, Plaintiff had pleaded the General Iſſue, and given Notice to ſet off his Demand under the Award. *Per Cur':* It appears that Demand of the Money awarded was made, and Defendant in Contempt *June* 10. the Notice to ſet off was not till *June* 24. If Defendant pays the Money it cannot be ſet off. Plaintiff refuſing to conſent to a Reference to Prothonotary, Rule was made Abſolute for Attachment, but ordered to ſtay a Month in the Officer's Hands. *Barnes* 42.

SECT. IX.

Concerning the Performance of the Award.

1. THE Award being made by the Arbitrators, it is incumbent on each Party to perform whatever is awarded on his or their Part to be done; provided it be made in ſuch Manner as the Law preſcribes; for it ſeldom happens that any Thing elſe will excuſe the Parties.

2. But if the Award be void, as being againſt Law, the Parties are not obliged to perform it, though the Submiſſion be by Bond, or otherwiſe. *Dal.* 43.

3. Yet it is ſaid, that if after ſuch void Award made, there be an *Aſſumpſit* to perfom it, this ſhall bind, for *Volenti non fit Injuria.* Noy 62.

4. If an Award be, that each of the Parties ſhall diſcontinue the Actions which they have one againſt the other, (admitting this is good, though it is not final) this is a good Award; for if the Court will not ſuffer a Diſcontinuance to be made, the Party ſhall be excuſed. 3 *Leon.* 62.

5. It is held, that where a Thing is awarded to be done, which afterwards becomes impoſſible by the Act of God, that the Party is excuſed; as if an Award be, to deliver a Horſe before ſuch a Day, and he dies before the Day, the Party is excuſed. 21 *E.* 4. 70.

6. But if a Thing awarded to be done, becomes impoſſible by the Act of a Stranger, how far that will excuſe the Non-performance, *quære*, and ſee *Mod.* 27, 28.

7. In Debt upon an Obligation, conditioned for the Performance of an Award, by which the Parties

Parties were obliged to give mutual Releaſes, the Defendant pleaded, that he made a Releaſe to the Plaintiff, and delivered it to *J. S.* for his Uſe; and this was held a good Performance, for that the Defendant could not plead *Non eſt factum*; neither could he countermand it; and as the Arbitrators had not appointed any Place where the Releaſes ſhould be delivered; if the Plaintiff ſhould abſent himſelf, it would be very inconvenient. *Cro. Eliz.* 54.

8. If in Debt upon an Obligation, conditioned for the Performance of the Award of *J. S.* the Defendant pleads, That whereas there was a Suit in Chancery by the now Defendant, againſt the now Plaintiff, for ſuch a Cauſe, *&c.* the ſaid *J. S.* did award that the ſaid Suit ſhould ceaſe, and that the now Plaintiff ſhould ſtand acquitted *de qualibet materia in eadem contenta*, and avers that he did not any further proſecute the ſaid Suit, but that the now Plaintiff always after *Stetit inde quietus*; this is a good Plea, without ſhewing any Diſcharge *in Facto*; and the Award being, that he *ſtaret acquietatus*, it is no more, than that by that Award he ſhould be acquitted. *Cro. Jac.* 339.

9. In Debt upon an Obligation for Performance of an Award, which was, That the Plaintiff ſhould not proſecute, nor proceed in the ſame Term, in ſuch an Action; and it was held by the Court to be a good Award; and it was likewiſe agreed, that the Award being, that he ſhould not proſecute in ſuch an Action in the ſame Term, that the Entry of Continuance from Term to Term is not any Breach; and by two Juſtices, if one be obliged that he ſhall not continue ſuch a Suit; if he continue it by Attorney, it is a Breach of the Obligation; but if the Attorney enter the Continuance without his Privity, it is no Breach. *Cro. Jac.* 525.

Vide the 9th *Chapter*, concerning pleading of Awards, what ſhall be a Breach, *&c.*

If the Arbitrators award Releaſes *ab initio* until the Time of the Award, and the Party releaſes until the Time of the Submiſſion, this is a good Performance of the Award; *per Holt* Chief Juſtice. Ld. *Raym.* 116.

SECT. X.

Precedents of different kinds of Awards.

An Award in common Form, when the Submiſſion is by Bond.

Though Doctor Burn very judiciouſly obſerves that Awards are not comprehended in any Expreſſion in the Stamp Acts, unleſs under the Word *Obligatory* Inſtrument; and alſo that if they are comprehended under thoſe Words they are liable only to a double Sixpenny Stamp; they are always engroſſed on an Half

TO all People to whom this preſent writing of Award ſhall come, *A. B.* and *C. D.* of, *&c.* ſend Greeting. Whereas great Variance, Strife, Debate and Controverſy hath heretofore been had, moved and ſtirred, between *E. F.* of, *&c.* and *G. H.* of, *&c.* of, for and concerning, *&c.*—— For the appeaſing and ending whereof, either of the ſaid Parties, by their mutual Aſſents, Conſents and Agreements, have ſubmitted and bound themſelves either to the other, by their ſeveral Writings Obligatory, bearing Date, *&c.* in the Sum of, *&c.* to ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Order, Arbitrament, Judgment, final End and Determination of us the ſaid *A. B.* and *C. D.* Arbitrators indifferently elected and choſen between the ſaid Parties, to arbitrate, award, order, *&c.*——of and for the Premiſſes, as by the ſaid ſeveral Obligations, with the Conditions for the Performance thereof, relation thereunto had, more at large may appear: Now know ye, That we the ſaid Arbitrators, having taken upon us the Buſineſs and Charge of the ſaid Award, and willing

willing to ſet the ſaid Parties at Peace and Concord, by making a final End and Determination concerning the Premiſſes in Controverſy; and having taken good Advice and Deliberation, and heard, and examined their Proofs and Allegations concerning the ſaid Premiſſes in Controverſy, do make, publiſh, declare and give up this our Award concerning the Premiſſes, in Manner and Form following, *viz.* Firſt, We award, order, judge and determine, that, *&c.* alſo we award, *&c.* Finally, we award, judge and determine, *&c.* *In Witneſs* whereof we, the ſaid Arbitrators, have put our Hands and Seals the Day of *&c.*

Crown Stamp, as being comprehended we preſume under the Word Deed Poll in the Stamp Act.

Another Form of an Award, upon a Submiſſion by Bond.

TO all People, to whom this preſent Writing of Award ſhall come, *A. B.* of, *&c.* and *C. D.* of, *&c.* Arbitrators indifferently choſen, elected and named, by and between *E. F.* of, *&c.* and *G. H.* of, *&c.* to arbitrate, award, order, judge and determine, of, for, upon and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time before our ſaid Election, had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by or between the ſaid Parties, as by the ſeveral Bonds or Writings Obligatory of the ſaid Parties, with the Condition thereof, relation being thereunto had, more fully and at large may appear. Now know ye, That we the ſaid Arbitrators, in purſuance of our ſaid Election, and the Power given us thereby for the ending of all Matters to us therein

Stamp as. 6d.

therein ſubmitted, and for the future Peace and Quiet of the ſaid Parties concerning the Premiſſes, do arbitrate, award, order, judge and determine thereupon as followeth: Firſt, *&c.* —— *In Witneſs* whereof we, the ſaid Arbitrators, have to theſe our preſent, *&c.* interchangeably ſet our Hands and Seals the Day of *Ann. Dom.* 1730.

The Form of an Umpirage, briefly thus:

Stamp 2s. 6d. TO all People to whom this preſent Writing ſhall come, I *A. B.* of *C. &c.* Umpire, indifferently choſen by *E. F.* of, *&c.* and *G. H.* of, *&c.* having deliberately heard and underſtood the Griefs and Allegations, and Proofs of both the ſaid Parties, and willing, as much as in me lieth, to ſet the ſaid Parties at Unity and good Accord, do by theſe Preſents arbitrate, award, order, deem, decree and judge, That the ſaid *E. F.* his Executors or Adminiſtrators, ſhall well and truly pay, or cauſe to be paid unto the ſaid *G. H.* his Executors, Adminiſtrators or Aſſigns, at or in the, *&c.* the full Sum of ten Pounds of lawful Money of *Great Britain*, on the firſt Day of *May* next enſuing the Date hereof; and that upon Payment thereof, either of the ſaid *E. F.* and *G. H.* ſhall ſeal, ſubſcribe, and, as his ſeveral Act and Deed, deliver unto the other of them a general Releaſe in Writing, of all Matters, Actions, Suits, Cauſes of Actions, Bonds, Bills, Covenants, Controverſies and Demands whatſoever; which either of them may, might, or in any wiſe ought to have, of, and againſt the other of them, by Reaſon aforeſaid, or Means of any Matter, Cauſe or Thing whatſoever, from the Beginning of the Word until the 29th of *April*, (the Date of the Bonds of Submiſſion.) *In Witneſs* whereof

whereof I have hereunto ſet my Hand and Seal the Day of in the Year of the Reign of, &c. *Ann. Dom.* 1730.

Another Form of an Award or Arbitration, made by two Arbitrators.

TO all to whom theſe Preſents ſhall come, or may concern, or to all to whom this preſent Writing of Award indented ſhall come, We *J. C.* of *S.* in the County of, &c. and *J. W.* of, &c. ſend Greeting. *Whereas J. E.* of, &c. having a Leaſe of a Farm of Lands, called, &c. and ſituate in, &c. and now in his the ſaid *J. E.*'s Poſſeſſion, did agree to refer the Valuation, Appraiſement and Eſtimation, as well of the Term of Years then therein to come, as alſo all the Iron Mine, Woods, Underwoods, Repairs, and all other Matters in Diſpute between the ſaid *J. E.* and *J. W.* of *W.* in the ſaid County, Yeoman, of, for, touching and concerning the ſaid *J. W.*'s taking and accepting of ſuch Leaſe, Iron Mine, Repairs, Woods, Underwoods, Wood-Grounds and other Matters touching and concerning the ſame: In purſuance whereof the ſaid *J. E.* and *J. W.* have bound themſelves either to the other in the Penal Sum of 100*l.* by their ſeveral Obligations, bearing Date with Conditions there under-written, to ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Order, Arbitration, final End and Determination of them the ſaid *J. C.* and *J. W.* indifferently named, elected and choſen, by the mutual Conſent, and at the earneſt Requeſt and Petition of both the ſaid Parties; ſo that the ſaid Award was made in Writing, ready to be delivered to the ſaid Parties in Difference, or to ſuch of them as ſhould deſire the ſame, on or before, &c. as in and by the ſaid Ob-

Stamp 2s. 6d.

Obligations and Conditions thereof more plainly doth appear. *Now know ye*, That we the ſaid *J. C.* and *J. W.* having taken upon us the Burthen and Charge of the ſaid Award, and having deliberately and at large heard, examined, viewed and conſidered of the Value, Eſtimation and Contents of the ſaid Farm, Goods, Chattels and Premiſſes, do by theſe Preſents award, deem, adjudge and order, in Manner and Form following; that is to ſay, Firſt, We do award, order and judge, That, *&c.* (and ſo having ſet down the Particulars of the Award, you may conclude thus, *viz*) and for the better Atteſtation and Confirmation of this Award, we the ſaid Arbitrators have hereunto ſet our Hands and Seals this, *&c.*

The Form of an Award by one Arbitrator, or Umpire.

Stamp 2s. 6d. TO all Chriſtian People to whom this preſent Writing of Award ſhall come, *J. E.* of *B.* in the County of, *&c.* Eſq; ſendeth Greeting. *Whereas* divers Suits, Variances, Controverſies and Debates heretofore have been moved, and depending between *E. T.* of, *&c.* of the one Part, and *R. H.* of, *&c.* of the other Part, for pacifying, ordering and ending whereof, the ſaid *E. T.* and *R. H.* have bound themſelves either to the other in the Sum of 100*l.* by their ſeveral Obligations bearing Date the 23d Day of *November* laſt paſt, with Conditions there under-written, to ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of the ſaid *J. E.* indifferently elected and choſen, by the mutual Conſent, and at the earneſt Requeſt and Petition of both the ſaid Parties, to arbitrate, award, judge, order and determine of, for, and concerning

concerning all and all Manner of Action, and Actions, Cauſe and Cauſes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time heretofore had, made, moved or depending between the ſaid Parties, by Reaſon of any Act, Matter, Cauſe, or Thing whatſoever, from the Beginning of the World unto the Day of the Date of the ſaid Obligations; ſo that the ſame Award was made in Writing, or otherwiſe ready to be delivered to the ſaid Parties in Difference, or to ſuch of them as ſhould deſire the ſame, on or before the, *&c.* as in and by the ſaid Bonds, or Writings Obligatory, it doth and may more fully and at large appear. *Now know ye,* That the ſaid *J. E.* of his good Will and Favour which he beareth to the ſaid Parties, and out of the great Reſpect he hath to their future Quiet and Unity, taking upon him the Charge and Burthen of the ſaid Award, and having deliberately and at large heard and examined, and conſidered the Grievances, Allegations, Witneſſes, and Evidences of both the ſaid Parties, doth by theſe Preſents arbitrate, award, judge, deem, order and determine, That the ſaid *E. T.* do and ſhall pay, or cauſe to be paid unto the ſaid *R. H.* 100 *l.* of, *&c.* at or upon, *&c.* and that upon Payment thereof, either of them the ſaid *E. T.* and *R. H.* ſhall ſeal and ſubſcribe, and, as his ſeveral Act and Deed, deliver unto the other of them a general Releaſe in Writing, of all Matters, Actions, Suits, Cauſe and Cauſes of Actions, Bonds, Bills, Covenants, Controverſies and Demands whatſoever either of them hath, may, might, or in any wiſe ought to have againſt the other of them, by Reaſon of the Matters aforeſaid, or by Reaſon or Means of any Matter, Cauſe or Thing whatſoever, from the Beginning of the World to,

&c.

&c. (the Date of the Bonds of Submiſſion.) In Witneſs, &c.

An Award between Executors at Controverſy about the Teſtator's Goods, made by four Arbitrators.

Stamp 2s. 6d. TO all People to whom this preſent Writing of Award Indented ſhall come, We *H. T.* of, *&c. W. N.* of, *&c. A. H.* of, *&c. J. H.* of, *&c.* ſend Greeting. Whereas lately heretofore a Suit, Variance or Controverſy was had and moved by or between *R. K.* of, *&c.* of the one Part, and *G. K.* of, *&c.* of the other Part, for and touching the Execution of the Laſt Will and Teſtament of *C. P.* late of *L.* Widow, deceaſed; who had thereby ordained, made and appointed the ſaid *R.* and *G.* Executors of her ſaid Laſt Will and Teſtament; for the final ending whereof, and of all other Controverſies betwixt the ſaid Parties, they have ſubmitted themſelves to the Award, Arbitrament and Judgment of us the ſaid Arbitrators, in ſuch Sort or Manner as by ſeveral Obligations of 50 *l.* apiece in that Behalf made by either of the ſaid Parties to the other of them, dated, *&c.* with their ſeveral Conditions, plainly may appear; the Charge and Buſineſs of which ſaid Award and Arbitrament, we the ſaid Arbitrators have taken upon us, and have throughly heard and conſidered of all the Controverſies between the ſaid Parties, and of their Allegations, Declarations and Anſwers on both Sides; and now we do by theſe Preſents make and give up our Award, Arbitrament, final End, Order and Judgment, of and upon the ſame Premiſſes, between the ſaid Parties, in Manner and Form following, *viz. Firſt*, We do award, order and judge, by theſe Preſents, that the ſaid *G. K.* and

and his Executors, ſhall permit and ſuffer the ſaid *R. K.* to have and enjoy to his own Uſe, that Mourning Gown or Cloak, which he had after the Deceaſe of the ſaid *C. P.* againſt her Burial; *And alſo* that the ſaid *G.* his Executors, Adminiſtrators or Aſſigns, ſhall on the 10th Day of, *&c.* between the Hours of, *&c.* pay, or cauſe to be paid to the ſaid *R. K.* his certain Attorney, Executors or Adminiſtrators, at, *&c.* the Sum of, *&c.* and then and there alſo ſhall clearly and freely give and deliver to the ſaid *R.* his Executors, Adminiſtrators or Aſſigns, ſix Silver Diſhes, and a Silver Bowl Gilt, the whole weighing 29 Ounces, which late belonged to *C. P.* *And* we do further award, *&c.* That the ſaid *R.* his Executors or Adminiſtrators, ſhall not at any Time hereafter either deal or intermeddle with the Execution of the Laſt Will or Teſtament of the ſaid *C. P.* or claim, take or challenge any of the Goods or Chattels which were of the ſaid *C.* other than only the Diſhes and Bowl aforeſaid; or receive, take, acquit and diſcharge any Debt or Duty which was owing or growing due to the ſaid *C.* whilſt ſhe lived; *And alſo* that the ſaid *R. K.* his Executors, Adminiſtrators and Aſſigns, from Time to Time, and at all Times hereafter, ſhall agree and conſent, permit and ſuffer, that the ſaid *G.* his Executors and Adminiſtrators, ſhall and may peaceably and quietly have and take, and by all lawful Means recover and enjoy all and ſingular the Goods, Chattels and Debts which were of the ſaid *C.* at the Time of her Deceaſe, other than only the Diſhes and Bowl aforeſaid, without any Let, Claim, Hindrance or Impediment of the ſaid *R.* his Executors or Adminiſtrators; And alſo that the ſaid *R.* his Executors and Aſſigns, upon Payment and Delivery to him, or any of them, made of the Sum of Money, Diſhes and Bowl aforeſaid, in Form aforeſaid, ſhall deliver,

liver, or cauſe, &c. to the ſaid *G. K.* his Executors or Adminiſtrators, one ſufficient Acquittance teſtifying the Receipt of the ſame Money, Diſhes and Bowl aforeſaid. *And moreover* We the ſaid *H. &c.* do hereby award, *&c.* that the ſaid *G.* his Executors or Adminiſtrators, at the only Coſts and Charges of the ſaid *G.* his Executors or Adminiſtrators, ſhall well and ſufficiently at all Times hereafter, upon reaſonable Requeſt to him or them to be made by him the ſaid *R.* his Executors, Adminiſtrators or Aſſigns, ſave and keep harmleſs and indemnified the ſame *R.* his Executors and Adminiſtrators, of and from all and all Manner of Actions, Suits, Coſts, Damages, Judgments, Executions and Demands, which ſhall be had or brought againſt the ſaid *R.* his Executors or Adminiſtrators, by Reaſon or Means that the ſaid *R.* did take upon him to be Executor of the ſaid Teſtament of the ſaid *C.* And alſo that the ſaid *G.* ſhall pay for the Drawing and Ingroſſing of theſe Preſents. *And laſtly*, We do award that either of the ſaid Parties, their Executors and Adminiſtrators, for their ſeveral Parts, ſhall from henceforth ſurceaſe from all farther Suit or Suits, Quarrels, Controverſies and Differences whatſoever, both in Law and Equity, for any Matter between them two had, ſtirred or depending, at any Time before the Day of the Date of the ſaid Obligations for ſtanding to this Award, *&c.* *In Witneſs*, &c.

An Award in a Controverſy, ariſing by Means of a Copartnerſhip.

Stamp 2s. 6d. TO all to whom this preſent Writing of Award ſhall come, *T. S.* of, *&c.* and *S. B.* of, *&c.* ſend Greeting. *Whereas* heretofore there have been divers Strifes and Variances moved, and are yet dependin g

depending between *R: H.* of, *&c.* and *J. C.* of, *&c.* Executors of *T. C.* late of, *&c.* of the one Part, and *H. B.* of, *&c.* of the other Part; for the appeasing and final ending whereof, the said Parties have jointly and severally consented and entered into several Obligations, dated, *&c.* and which the said Parties have interchangeably sealed and delivered each to the other, and in the Conditions thereof have constituted, nominated and appointed us, the said *T. S.* and *S. B.* their Judges and Arbitrators, to award, arbitrate, ordain, order, judge and determine, of, for, touching and concerning all and all Manner of Actions, as well Real as Personal, Suits, Quarrels, Controversies, Strifes, Variances, Accounts, Reckonings, Sums of Money, Costs, Debts, Dues, Damages and Demands whatsoever, had, moved, stirred or depending between the said Parties, in any Manner of wise, from the Beginning of the World until the Date of the said Obligations, so as the same Arbitrament, Order or Judgment were had or made by us the said Arbitrators, and put in Writing under our Hands and Seals, ready to be delivered to the said Parties, or any of them, before the last Day of this Instant, *&c.* as by the said Obligations, with their several Conditions there under-written, more fully may appear: *And for as much* as we, the said Arbitrators, have taken the Charge and Burthen of the said Judgment and Arbitrament upon us, and thereupon have deliberately heard and examined all Variances and Controversies between the said Parties, and their Allegations, Answers and Proofs in that Behalf alledged, made and produced, do now thereof and thereupon make, ordain, and give up, in and by this present Writing Indented, under our Hands and Seals, our full and final Award, Arbitrament, Ordinance and Judgment, in Manner and Form following; that is to say, *That whereas* the said *T. C.*

while

while he lived, and the ſaid *H. B.* were Copartners, and jointly Trafficked together in divers Things, the Accounts whereof we have ſeen and examined; we do thereupon award, arbitrate, ordain and judge, by theſe Preſents, that the ſaid *R. H.* and *J. C.* or one of them, their Executors and Adminiſtrators, ſhall well and truly pay, or cauſe to be paid to the ſaid *H. B.* his Executors, *&c.* the Sum of, *&c.* at, *&c.* that is to ſay, *&c.* *And* alſo we do by theſe Preſents arbitrate, award, ordain and judge, that the ſaid *H.* his Executors and Adminiſtrators, ſhall from Time to Time, upon the reaſonable Requeſt of the ſaid *R.* or *J.* their Executors or Adminiſtrators, conſent, ſuffer and agree, that at the equal and indifferent Coſts and Charges of the ſaid *R. J.* and *H.* and their ſeveral Executors and Adminiſtrators, all and all Manner of lawful Suits, Actions, Recoveries, Judgments and Executions, ſhall and may in the Name and Names of the ſaid *H.* his Executors and Adminiſtrators, be had and purſued with Effect againſt all and every Perſon and Perſons, of and upon the Books of the ſaid Accompts, and all and every Bond or Bonds, and Specialties whatſoever, which the ſaid *H.* hath, of, or touching all or any of the Debts ſpecified in the Schedule to theſe Preſents annexed; and all and every the Profits, Commodities and Advantages whatſoever, to be had or gotten by Means of any the ſaid Suits, Actions, Recoveries, Judgments and Executions, or by Means of any of them, ſhall be equally had, parted and divided, Part and Part-alike, the one Half thereof to the ſaid *R. E.* his Executors and Adminiſtrators, and that neither of the ſaid Parties, nor their ſeveral Executors or Adminiſtrators, ſhall wittingly or willingly, without the Conſent of the other Party, or of his or their Executors or Adminiſtrators, do, procure, or cauſe any Thing to be done,

to

to hinder or defeat any the ſaid lawful Suits, Actions, Recoveries, Judgments, or Executions, to be had as aforeſaid, of or for any the ſaid Debts, or to let or hinder the dividing of all Profits, Commodities or Advantages thereof or thereby to be had or gotten, contrary to the true Intent and Meaning aforeſaid. *And further* we do award, order and judge, by theſe Preſents, that the ſaid *H. B.* upon reaſonable Requeſt, ſhall on the firſt Day of, *&c.* now next enſuing, make, ſeal and deliver, or cauſe to be delivered to the ſaid *R. H.* and *J. C.* or to one of them, or otherwiſe for both their Uſes, at, or in, *&c.* between the Hours of, *&c.* of the ſame Day, or otherwiſe in the mean Time before hand, one lawful Acquittance general, of and for all Actions, Suits, Quarrels and Demands, from the Beginning of the World until the Day of the Date of the Obligations aforeſaid. *And* likewiſe we do award, that the ſaid *R.* and *J.* upon the like reaſonable Requeſt, ſhall on the ſaid, *&c.* now alſo next enſuing, deliver, or cauſe to be delivered to the ſaid *H. B.* at, or in, *&c.* between the Hours of, *&c.* or otherwiſe, *&c.* one lawful Acquittance general, of and for all Actions, *&c. ut ſupra. In Witneſs*, &c.

To pay Money, and ſign Releaſes.

TO all to whom this preſent Writing of Award ſhall come, *J. A.* of, *&c.* ſend Greeting. Stamp 2s. 6d. *Whereas* Differences have ariſen, and are depending, between *B.* of, *&c.* of the one Part, and *C.* of, *&c.* of the other Part, for the Compoſing and final Ending whereof, they the ſaid *B.* and *C.* by Two ſeveral Obligations under their Hands and Seals, bearing Date the, *&c.* Day of, *&c.* now laſt paſt, became and ſtand bound to each other in the Penalty of, *&c.* a-piece, conditioned reſpectively to

ſtand to, and perform the Award and Determination of me the ſaid *A.* Arbitrator, indifferently elected and named between the ſaid Parties, to award, order, judge and determine of and concerning all Manner of Actions, and Cauſes of Action, Suits, Bonds, Bills, Specialties, Judgments, Executions, Controverſies, Damages and Demands between them, ſo as my Award ſhould be made in Writing, and ready to be delivered to the ſaid Parties in Difference, on or before the, *&c.* then next enſuing, as by the ſaid recited Obligation and Conditions, Relation, *&c. Now know ye*, that I the ſaid *A.* having taken upon me, the Burthen of the ſaid Award, and fully heard and examined the ſaid Parties in Difference, and their ſeveral Proofs and Allegations, and duly conſidered thereof, do, within the Time to me in that Behalf limited, make and declare this my Award between them, as followeth, *viz.* Firſt, I award and order, that the ſaid *C.* his Heirs, Executors or Adminiſtrators, do and ſhall, on or before the, *&c.* at the Dwelling-houſe of *R. B.* ſituate in *Lombard-ſtreet, London*, well and truly pay, or cauſe to be paid unto the ſaid *B.* his Executors, Adminiſtratros or Aſſigns, the Sum of, *&c.* which Money being paid, as aforeſaid, I Award ſhall be in full Satisfaction and Diſcharge of all Actions and Suits, and Cauſes thereof, Bills, Bonds, Specialties, Debts, Dues, Sum and Sums of Money, Accounts, Reckonings, Judgments, Executions, Extents, Damages, Claims and Demands whatſoever, between the ſaid Parties, to the ſaid, *&c.* Day of, *&c.* now laſt paſt; and that the ſaid *B.* ſhall accept thereof accordingly, being paid as aforeſaid; *And* laſtly I Award, that the ſaid Sum of, *&c.* being paid, as aforeſaid, they the ſaid Parties, their Executors and Adminiſtrators, ſhall, on the ſaid Day of, *&c.* now inſtant, and at the Place aforeſaid, execute and deliver to each

each other reſpectively, a ſufficient Releaſe and Diſcharge of and from all Actions and Suits, and Cauſes thereof, Bills, Bonds, Specialties, Debts, Sums of Money, Accounts, Reckonings, Judgments, Extents, Executions, Damages, Claims and Demands whatſoever, in Law and Equity, between the ſaid Parties, from the Beginning of the World to the ſaid —— Day of —— now laſt paſt (*the Date of the Bonds*). In Witneſs, &c.

An Award to pay Money, being the Ballance of an Account, and to pay back Part of the Money received with an Apprentice, and to deliver up his Indentures to be cancelled, and to ſign Releaſes.

TO all, *&c.* I *A.* of, *&c.* ſend Greeting. Stamp 2s. 6d. Whereas Differences and Suits have ariſen, and are depending between *B.* of, *&c.* of the one Part, and *C.* of, *&c.* of the other Part, for the Compoſing and final ending whereof, they the ſaid *B.* and *C.* by two ſeveral Obligations under their Hands and Seals, bearing Date, *&c.* became and ſtand bound to each other, in the Sum or Penalty of, *&c.* a-piece, conditioned reſpectively to ſtand to and perform the Award, Order, Arbitrament and Determination of *D.* and *E.* Arbitrators indifferently named and choſen, as well on the Part of the ſaid *B.* as of the ſaid *C.* and *C. G.* her Son, to arbitrate, award, judge and determine of and concerning all and all Manner of Actions and Cauſes of Action, Suits, *&c.* (*as uſual*) ſo as their ſaid Award ſhould be made in Writing, ready to be delivered to the ſaid Parties, on or before the, *&c.* but if the ſaid Arbitrators ſhould not make ſuch their

Award of and concerning the Premiſſes, by the Time aforeſaid, then to ſtand to and perform the Award, Umpirage and Determination of me the ſaid *A.* ſo as my ſaid Award or Umpirage ſhould be made in Writing, ready to be delivered to the ſaid Parties in Difference, on or before the——Day of the ſaid Month of———And the ſaid Parties did thereby agree, that their ſaid Submiſſion ſhould be made a Rule of his Majeſty's Court of King's Bench at *Weſtminſter*, purſuant to a late Act of Parliament, entitled, *An Act for determining Differences by Arbitration*, as by the ſaid recited Obligation and Condition, Relation, *&c. Now know ye*, that I the ſaid *A.* having taken upon me the Burthen of the ſaid Award, and fully, *&c.* (*as uſual*) : Firſt, I award and order, that the ſaid *B.* his Executors, Adminiſtrators or Aſſigns, do and ſhall, on or before the, *&c.* at the Dwelling-houſe of *R. B. &c.* well and truly pay, or cauſe to be paid unto the ſaid *C.* her Executors, Adminiſtrators or Aſſigns, the Sum of, *&c.* due to the ſaid *C.* from the ſaid *B.* in Conſideration of his Taking the ſaid *C. G.* Son of the ſaid *C.* to be his Apprentice, and who is now diſcharged therefrom, and of all Charges of Suit in and about the ſame ; and I award that the ſaid Parties ſhall then alſo deliver up to each other, and cancel the ſaid *C. G.*'s Indentures of Apprenticeſhip ; which ſaid ſeveral Sums of Money being paid, as aforeſaid, I award ſhall be in full Satisfaction and Diſcharge ; and that the ſaid Parties do and ſhall, at the ſame Time and Place aforeſaid, ſeal, execute, and deliver unto each other, his and her Executors and Adminiſtrators reſpectively, a ſufficient Releaſe and Diſcharge of, for, and from all Actions, Suits and Cauſes thereof, Bills, Specialties, Debts, Sums of Money, Accounts, Judgments, Executions, Damages and Demands at Law and Equity, between the ſaid Parties, as well

concerning

concerning any the Accounts between them, as for and concerning the ſaid *C. G.* and his Service aforeſaid, or relating thereunto, and for and concerning any other Accounts, Cauſe or Thing, between the ſaid Parties to the, *&c.* *In Witneſs*, &c.

An Award, ordering a Maſter of a Ship to make Oath before a Magiſtrate of the Delivery of the Goods beyond Sea, and what ſold for, and to procure a Teſtimony thereof from the Perſon delivered to; and upon ſo doing, ordering Money to be paid him, and a Bond, which he gave for the Sale of the ſaid Goods, to be delivered up, &c.

TO all, *&c.* We *A.* and *B.* of, *&c.* ſend Greeting. Whereas Differences are ariſen, and are depending between *C.* and *D.* of the one Part, and *E.* of, *&c.* Mariner, of the other Part, which ſaid Differences the ſaid Parties have referred to the Award and Determination of us the ſaid *A.* and *B.* ſo as we ſhould make our Award concerning the ſame, on or before the, *&c.* *Now know ye*, that we the ſaid *A.* and *B.* having taken, *&c.* (*as uſual*): Firſt, We award and order, that the ſaid *E.* ſhall, within ten Days, make Oath before ſome Juſtice of the Peace, or other Magiſtrate of the City of *London*, that the two Bales of Merchandize ſhipped on board the Ship called the *R.* the ſaid *E.* Maſter, in her late Voyage to *Barbadoes*, on Account of the ſaid *C.* and *D.* and conſigned to the ſaid *E.* and marked, *&c.* according to the Invoice of the ſaid Goods, were *bona fide*, to the beſt of his the ſaid *E.*'s Stamp 2s. 6d.

Knowledge and Belief, ſold in *Barbadoes* by Mr. *N.* for, *&c. per Cent.* Advance, and no more; and that he the ſaid *E.* for the farther Proof thereof, and better Satisfaction therein, ſhall and do, by the firſt Opportunity, procure from *Barbadoes* aforeſaid, an Advice or Teſtimony thereof from the ſaid *N.* confirming the ſame; and we further Award, that the ſaid *E.* his Executors, Adminiſtrators or Aſſigns, do and ſhall, within twenty Days now next, truly pay, or cauſe to be paid unto the ſaid *C.* and *D.* their Executors, Adminiſtrators or Aſſigns, or ſome or one of them, the Sum of —— which we Award is to be, and ſhall be in full Satisfaction to the ſaid *C.* and *D.* as well for a Box of Hats ſhipped on board the ſaid Ship *R.* by the ſaid *C.* and *D.* and mentioned in the Invoice aforeſaid, which Hats were left by the ſaid *E.* at *Barbadoes* aforeſaid; as alſo in full of all Monies remaining in the Hands of, or any Ways due and owing to the ſaid *C.* And further we award, that the ſaid Box of Hats, and all Effects and Produce, ſhall remain and be for the proper Account only of the ſaid *E.* and that the ſaid *C. D.* ſhall do any further Act to make and confirm his Title and Intereſt in and to the ſame: And laſtly we Award that the ſaid *C.* and *D.* ſhall, at the Time of Payment of the ſaid, *&c.* as aforeſaid, deliver up to the ſaid *E.* a Bond or Obligation under his Hand and Seal, whereby he ſtands obliged for and concerning the Sale and Diſpoſal of the ſaid Goods, or for or concerning the ſame to be cancelled; that they ſhall then likewiſe diſcharge him the ſaid *E.* from the ſaid two Bales of Goods and Box of Hats, and all Actions, Suits, Accounts and Demands concerning them. *In Witneſs*, &c.

Another

Another Form of an Award by three Arbitrators, wherein is a special Recital of the Matters to be performed.

TO all Christian People to whom this present Writing of Award indented shall come, *A. B. C. D.* and *E. F.* of, *&c.* send Greeting. *Whereas* divers Suits, *&c.* between *T. W.* and *J. S.* of, *&c.* for pacifying, composing, ordering, and ending whereof, the said *T. W.* and *J. S.* have bound themselves either to the other, in the Sum of One thousand Pounds of lawful, *&c.* by several Obligations bearing Date, *&c.* with Conditions there under-written to stand to, *ut supra*, of the said *A. B. C. D.* and *E. F.* Arbitrators indifferently elected and chosen, as well on the Part and Behalf of the said *J. S.* as of the said *T. W.* to award, arbitrate, order, rule, judge, end and determine all Manner of Actions, *&c.* depending between the said *J. S.* and the said *T. W.* so that the said Award were made and given up in Writing, under the Hands and Seals of all the said Arbitrators, *&c.* at, or before the, *&c.* at, or in the, *&c.* as by the said Obligations and Conditions amongst other Things doth and may appear. *Now know ye*, that the said *A. B. C. D.* and *E. F.* taking upon them the Charge and Burden of the said Award, and having deliberately heard the Allegations and Proofs of both the said Parties, do by these Presents arbitrate, award, order, decree and judge of and concerning the Premisses, in Manner and form following, that is to say, First they do award, order, decree and judge, by these Presents, that the said *J. S.* his Executors or Administrators, or some of them, at or before the, *&c.* at or in the, *&c.* Stamp 2s. 6d.

Two hundred Pounds of, &c. and at or before the, &c. at or in the ſaid, &c. other Two hundred Pounds of, &c. in full Satisfaction of 400 *l.* for Payment whereof the ſaid *J. S.* ſtood bound to the ſaid *T. W.* in and by four ſeveral Obligations, bearing Date, &c. whereof Two are already, &c. as thereby may appear: Alſo the ſaid Arbitrators do award, &c. that the ſaid *J. S.* his Executors or Adminiſtrators, or ſome of them, at their, or ſome of their Coſts and Charges, ſhall, before the, &c. cauſe and procure, that all Suits, Bills and Informations heretofore commenced againſt the ſaid *T. W.* in any Court or Courts whatſoever, either by or in the Name of the ſaid *J. S.* or by or in the Name of *H. S.* his Son, or by or in the Name of our Sovereign Lord the King that now is, and of every or any of them, or by or in the Name of any other Perſon or Perſons, by the Conſent, Means and Procurement of them, or any of them, and before the, &c. be utterly diſcontinued and made void: And the ſaid Arbitrators do further award, order, decree and judge by theſe Preſents, that for the true Payment of the ſaid Sum of 400 *l.* the ſaid *J. S.* and *G. S.* within two Days next after Tender or Delivery of one Part of this preſent Award to the ſaid *J. S.* ſhall well and ſufficiently make, ſeal and deliver as their Deeds, to the ſaid *T. W.* in, &c. one Obligation or Writing Obligatory, wherein and whereby the ſaid *J. S.* and *G. S.* ſhall acknowledge themſelves, or either of them, to be jointly and ſeverally bounden to the ſaid *T. W.* in the Sum of, &c. with Condition thereupon, in due Form of Law, endorſed or under-written, for the ſure Payment of the ſaid Sum of Two hundred Pounds, of, &c. Parcel of Four hundred Pounds, at or in the, &c. before the, &c. and the other Two hundred Pounds, Reſidue of the ſaid Sum of 400 *l.* at or before the, &c.

&c. and at, *&c.* Alſo the ſaid Arbitrators do further award, *&c.* That the ſaid *J. S.* his Executors or Adminiſtrators, or ſome of them, ſhall and will before, *&c.* at his and their own proper Coſts and Carges, cauſe and procure to be cancelled and made void, one Recognizance of Two hundred Pounds, bearing Date the, *&c.* acknowledged and enrolled in his Majeſty's High Court of Chancery, wherein and whereby the ſaid *T. W.* ſtands bounden to the ſaid *J. S.* in the ſaid Sum, with Condition thereunto annexed, That if the ſaid *T. W.* his Heirs, Executors and Adminiſtrators, and every of them, ſhould well and truly obſerve, perform, fulfil and keep, all and ſingular the Covenants, Grants, Articles and Agreements, which on his and their Parts are to be obſerved, *&c.* contained and ſpecified in one Indenture, bearing Date the, *&c.* had and made between the ſaid *T. W.* of the one Part, and the ſaid *J. S.* of the other Part, concerning the Marriage of *M. M.* Son and Heir apparent of the ſaid *T. W.* and *A. S.* Daughter of the ſaid *J. S.* according to the true Intent, Purport and Effect of the ſaid Indenture; that then the ſaid Recognizance to be void and of no Effect, or elſe to ſtand, *&c.* as by the ſaid Recognizance and Indenture, Relation being thereunto had, doth and may more fully and at large appear: And alſo that the ſaid *J. S.* his Executors or Adminiſtrators, or ſome of them, ſhall and will before the Feaſt of, *&c.* deliver, or cauſe to be delivered up unto the ſaid *T. W.* the ſaid Indenture of Covenant concerning the aforeſaid Marriage, cancelled or to be cancelled; in Conſideration whereof it is further ordained, awarded, decreed and judged by the ſaid Arbitrators, That he the ſaid *T. W.* do and ſhall, within two Days next after, *&c.* at, *&c.* make, *&c.* to the ſaid *J. S.* *In Witneſs* whereof the ſaid Arbitrators to both Parts of this preſent Award Indented

dented have ſet their Hands and Seals, *&c.* Dated, *&c.*

An Award made by Order of Chancery, to be confirmed by a Decree.

Stamp 2s. 6d. TO all Chriſtian People to whom theſe Preſents ſhall come, *A. B.* of, *&c.* and *C. D.* of, *&c.* ſend Greeting. *Whereas* by Order of the High Court of Chancery, bearing Date, *&c.* between *E. F. &c.* Plaintiff, and *G. H. &c.* Defendant; alſo between the ſaid *G. H.* Plaintiff, and *E. F.* Defendant, it is ordered by and with the Conſent of all the ſaid Parties, that all the Matters and Differences contained and mentioned in the ſaid ſeveral Suits, as they then ſtood in Court, ſhould ſtand referred to us the ſaid *A. B.* and *C. D.* and what Award or Order we ſhould make therein, ſhould be final and concluding to all Parties, ſo as the ſaid Award were publiſhed under our Hands and Seals before the, *&c.* then next enſuing, as by the ſaid Order, Relation being thereunto had, amongſt other Things it doth and may more at large appear. Know ye, That we the ſaid *A. B.* and *C. D.* having divers Times heard the Parties to the ſaid ſeveral Suits, and examined the ſeveral and reſpective Allegations and Pretences therein contained, to the Intent, and that a final End and Concluſion may be of the ſaid ſeveral Suits and Controverſies, and to every Matter and Thing in Difference relating thereunto, between the ſaid Parties, do hereby make and publiſh our Award touching and concerning all and ſingular the Matters to us referred, as aforeſaid, in Manner and Form following, that is to ſay, Whereas the ſaid *E. F.* did, *&c.* Firſt, We do order and award, that all and every the Plaintiffs and Defendants, in the ſaid ſeveral Suits

to

to us referred, ſhall ſeal and execute to each other ſuch Releaſes touching all and every the Matters and Things contained or mentioned in the ſaid ſeveral Suits, as by any of the ſaid Parties to the ſaid Suits ſhall, at any Time within a Year next enſuing, be reaſonably required. And 2dly, to be at the only Coſts and Charges of ſuch of the ſaid Parties in whoſe Behalf the ſame ſhall be required, ſo as the ſaid Releaſes do not extend to bar or diſcharge any Matter or Thing hereby awarded to be done or performed. 3dly, We do award, That all and every the Suits between the ſaid Parties to us referred ſhall ceaſe, and that no other or further Proceedings or Proſecutions in Law or Equity, be at any Time hereafter had, commenced or proſecuted by them, or any of them, their Heirs, Executors or Aſſigns, for or concerning any the Matters or Things in the ſaid ſeveral Suits contained; and that the Bills now depending againſt each other, ſhall be diſmiſſed without Coſts on either Side. *In Witneſs*, &c.

CHAP. VII.

How Awards have been conſtrued in Equity.

THE Law and Practice of the Court of Chancery is, in moſt Reſpects, conformable to the Law and Practice of the other Courts of *Weſtminſter*, in regard to its Proceedings, and the Conſtruction it makes on Awards and Arbitraments, and for the moſt part requires the ſame Exactneſs and

Conformity to Law that the other Courts do, with reſpect to the ſubject Matter ſubmitted to the Submiſſion, Parties to the Submiſſion, the Arbitrators, and the Award that they make. But as this Court has in ſome Inſtances deviated from the Courts of Law, by decreeing Awards in the Nature of Agreements, and obliging the Parties to a ſpecifick Performance of them; and likewiſe in being more ready in ſetting aſide Awards, and freeing the Parties from their Obligations, when they were found unreaſonable or injurious, by the Ignorance, Partiality, Diſhoneſty, *&c.* of the Arbitrators, than other Courts; it will not be improper in this Chapter, to ſet down all the Caſes we have reported on this Head, in our Books of Chancery.

Sect. I. Concerning the Matter to be ſubmitted.

Sect. II. Concerning the Submiſſion.

Sect. III. The Parties to the Submiſſion.

Sect. IV. Concerning the Arbitrators and Umpire.

Sect. V. Concerning the Award, and for what Cauſes it ſhall be ſet aſide.

SECT. I.

SECT. I.

Concerning the Matter to be ſubmitted.

1. THE Court of Chancery regularly obſerves the ſame Method, with regard to the Matters proper to be ſubmitted, that the other Courts do; and as it ſeldom aſſumes a Power more than others over Freeholds, Bonds, or Judgments, which are Things not properly Arbitrable, but are made ſo by the Parties entering into Bonds of Submiſſion; ſo if any Application is made to this Court concerning thoſe Things, it will, according to the Circumſtances of the Caſe, either ſet aſide the Award, and grant an Injunction againſt the Bond, or will allow the Party (if it be deemed good) to take his Remedy at Law, by ſuffering him to enter Judgment on the Bond, *&c.* But ſee the following Caſe.

2. The Plaintiff and Defendant had ſubmitted to an Arbitrament by Bond, and an Award was made, not binding by Form, by which the Plaintiff was to pay the Defendant 900 *l.* and to ſeal a Releaſe to the Defendant; and the Defendant was to aſſign ſeveral Securities he had from the Plaintiff; the Plaintiff ſold ſome Lands to raiſe the 900 *l.* expecting the Defendant would receive it, as he gave him Intimation he would, and tendered him the 900 *l.* and a Releaſe executed by the Plaintiff; and though there was no other Execution on the Plaintiff's Part of the Award, and though the Award was *extrajudicial*, and not good in Strictneſs of Law, yet the Lord *Chancellor* decreed it ſhould be performed in *Specie*. Decreed between *Norton*

Norton and *Maſcall*, *Paſch.* 1687. 2 *Vern.* 24, 25.

3. The Parties may conſent to have their Submiſſion made a Rule of this Court, as well as any other, but then it muſt be made and inforced purſuant to the Act of Parliament.

4. And if an Award is made purſuant to an Order of Court, the Party ought firſt to move the Court to confirm the Award, as is done upon a Maſter's Report, and either Side is at Liberty to except to it. 1 *Vern.* 469.

5. If an Award is made a Rule of Court, according to a Submiſſion for that Purpoſe, and an Attachment is taken out for not obeying the Award, and then the Party dies, againſt whom the Attachment iſſues, the Act of Parliament is of no Effect, the Remedy being gone. *Mich.* 1703. between *Webſter* and *Biſhop*, 2 *Vern.* 444. Therefore the Submiſſion is uſually by Bond as well as by Rule of Court.

A Bill in Equity lies to compel a ſpecifick Performance of an Award to convey an Eſtate, where the Party ſubmitting has received the Money, in Conſideration whereof he is to convey the Eſtate ſued for; and the Court will give Coſts, it being a Defence againſt Conſcience for Defendant to take the Money awarded, and yet perform his Part of the Award. 3 *Will. Rep.* 187.

It is ſaid that theſe Decrees may not have been uſual, becauſe Awards are commonly to pay Money; in which Caſes a Bill in Equity to compel a Performance is improper; but where the Award is to do any Thing in *Specie*, as to convey an Eſtate, *&c.* in ſuch Caſe, if the Defendant has accepted the Money awarded him in Satisfaction of the Conveyance, it is highly reaſonable that he ſhould make the Conveyance; the rather, for that if the Plaintiff had ſued the Bond at Law, the Defendant

fendant would have been relieved by Bill in Equity againſt the Penalty of the Bond, upon a *Quantum damnificatus*, ſo that ſuch a Decree as in the principal Caſe, prevents a Suit in Equity. *Ibid.* 190.

SECT. II.

Concerning the Submiſſion.

1. THE Submiſſion in Chancery is uſually by Rule of Court; but if Application is made to ſet aſide an Award, or to ſtay the Proceedings on the Bond in another Court, the Submiſſion is conſidered here in the ſame Light as at Law.

2. If the Submiſſion to an Award be conditional, *Ita quod* an Award be made *de & ſuper Premiſſis, &c.* then if the Award be not of the Whole, it is void; but if the Submiſſion be not conditional as aforeſaid, then, though the Award be but of Part of the Matter referred, it is good for ſo much as it ſettles, though it leave other Things at large; *per* Lord *Maynard*, 2 *Vern.* 109. And in this laſt Caſe an Award may be confirmed in Part, and made void in Part. *Vide* 1 *Chan. C.* 40.

SECT. III.

The Parties to the Submiſſion.

1. IF all the Parties to the Suit conſent to refer the Matter to *J. M.* and *J. S.* one of the Parties ſignifies his Conſent by ſigning a Paper to that Purpoſe, ſo that the Award be made by a certain Day therein limited, and no Award is then made; but afterwards the Court in the Preſence of all the Parties (except *J. S.* who was abſent) but his Solicitor conſenting on his Behalf, refer it back

to

to *J. M.* (but not finally to determine) who made an Award; and it was reſolved, that the Solicitor's Conſent ſhould not bind his Client; though it was objected and admitted, that an Attorney's Aſſent to a Reference on Behalf of his Client, ſhould bind him at Law. 18 *Car.* 2. between *Colwell* and *Child.* 1 *Chan. Caſes* 86.

2. An Infant cannot be a Party to a Submiſſion in Equity, neither will a Court of Equity decree an Award to bind an Infant, unleſs it plainly appears to be for the Infant's Advantage. 1 *Chan. Caſes* 279.

3. If *A.* and *B.* Executors of *J. S.* on the one Part, and *C.* his Widow, on the other, ſubmit to Arbitration, the Arbitrators may make an Award, not only of Matters in Difference between *A.* and *B.* jointly, or *A.* and *B.* ſeparately, and *C.* but alſo of Matters between *A.* and *B.* provided they have Knowledge of the whole Fact, and all the Parties Intereſted are before them. Between *Carter* and *Carter*, 1 *Vern.* 259.

SECT. IV.

Concerning the Arbitrators and Umpire.

1. IF the Submiſſion to an Award be, ſo as the Arbitrators make their Award at or upon the 27th of *March* then next; and if the Arbitrators make no Award, then if the Umpire make his Umpirage on the ſame Day. The Umpire cannot make his Umpirage on the ſame Day, though the Arbitrators diſagree, for they have all that Day to make their Award. 2 *Vern.* 100.

2. If by the Submiſſion the Arbitrators have Power to chuſe an Umpire, and they not agreeing, throw *Croſs* and *Pyle* which of them ſhould name the

the Perſon; and the Umpire thus choſen makes his Umpirage; the Court will ſet it aſide. 2 *Vern.* 485.

3. If the Parties in Court ſign an Order by Conſent, to refer their Matters to Arbitrators, finally to Determine, and their Award to be final, and ſtand ratified by Decree without any Appeal, yet one of the Parties may revoke this Submiſſion; but then the Court will grant an Attachment againſt him. 1 *Chan. Caſes* 185. *Note*; This was before the Statute of 9 & 10 *W. & M.*

4. There was a Submiſſion by Order of Court, and the Award was to be confirmed without Appeal or Exceptions, yet upon Debate Exceptions to the Award were admitted. 2 *Vern.* 109.

SECT. V.

Concerning the Award, and for what Cauſes it ſhall be ſet aſide.

1. IF two ſubmit themſelves to the Arbitrament of *J. S.* of all Controverſies, *ita quod, &c.* and *J. S.* makes an Award of Part only, ſo that the Award is void in Law, this ſhall not be made good in a Court of *Equity*; and a Prohibition granted to the Council of *York* accordingly. 1 *Rol. Abr.* 377.

2. If an Award differs from the Submiſſion, it ſhall be as well void in Equity as at Law. 1 *Chan. Caſes* 186.

3. The Plaintiff entered into a Bond of 50 *l.* ſufficiently to repair a Houſe by ſuch a Time, and he and the Defendant made two Arbitrators to be Judges of the Sufficiency of the Repairs; one of them alone declared that it was ſufficiently repaired; but in an Action brought on this Bond, his Evi-

dence was not allowed, becauſe both were made Judges of it. *Nel. Chan. Caſes* 87.

4. Upon a Submiſſion, by Conſent and Order of Court, an Award was made, that a Bond ſhould be given by the Guardian, and that the Infant at his full Age ſhould convey the Lands in Queſtion. *Per* Lord Chancellor *Nottingham*, When the Parties themſelves chuſe their own Judges, this Court will not relieve againſt the Award, unleſs it be in Caſe of Corruption, exceeding Authority, and the like; but when there is a Reference by Order of this Court, if it appear unequitable, the Court will not Decree it; and in this Caſe it being unreaſonable that the Guardian ſhould give ſuch a Bond, for the Infant may die, or if he live to Age, may refuſe to convey; and therefore he would not Decree it; and he farther ſaid, That he would never decree an Award to bind an Infant. 28 *Car.* 2. 1 *Chan. Caſes* 279.

5. If the Arbitrators appear to have an Intereſt in the Cargo, touching which the Award is made, and therefore put too great a Value thereon, and in five Days after the Award made, the Money is attached by the Arbitrators, for Money owing to them, the Court will ſet aſide the Award. *Hill.* 1691. between *Earle* and *Stocker*, 2 *Vern.* 251.

6. If a Submiſſion is to *three* Arbitrators, or any two of them, and two of them by Fraud or Force will exclude the other, that alone is ſufficient to vitiate the Award; or if they have private Meetings, and admit one of the Parties, but give no Notice to the other, but ſuffer the Party's Attorney whom they admitted, to draw up the Award, ſuch Award ſhall be ſet aſide for Partiality and Unfairneſs. *Mich.* 1705. between *Burton* and *Knight*, 2 *Vern.* 514.

7. If it appears that the Arbitrators went upon a plain Miſtake, either as to the Law, or in a Matter

Matter of Fact, the ſame is an Error appearing in the Body of the Award, and ſufficient to ſet it aſide. 2 *Vern.* 705.

8. A Submiſſion was to four Arbitrators, and if any Doubt appeared in the Award, it was to be explained by them; after the Death of one of the Arbitrators, one of the Parties ſuggeſts, that in a Conveyance of Lands which was to be made to him, and which was intended to be in Fee-ſimple, the Word *Heirs* was left out of the Award, and the three ſurviving Arbitrators certified, that their Intent was ſuch; and it was Decreed that ſuch Miſtake ſhould be amended, and the Party to have a Fee-ſimple accordingly. 1 *Chan. Rep.* 85.

9. The Plaintiff called the Defendant, who was a Butcher, *Bankrupt Knave*, which being ſubmitted to Reference, the Arbitrators gave him 495 *l.* to repair his Honour, (as they called it in the Award); and the Court thought the Damages too exceſſive, and ſet aſide the Award, but directed a Trial at Law, and the Jury gave him 10 *l.* 3 *Chan. Rep.* 76. 2 *Vern.* 251. *S. C.* cited, and there it is ſaid, that the Court did not ſet aſide the Award barely for exceſſive Damages, but becauſe it appeared that one of the Referees was the Butcher's Couſin. And ſee the next Caſe.

10. If Tenant for Life commits Waſte to the Value of 380 *l.* and his Eſtate is but 70 *l. per Annum*, and an Action of Waſte is brought againſt him by him in Remainder, and it is ſubmitted to a Reference by a Rule of Court; but before any Award made the Tenant for Life repairs the Places waſted to 40 *l.* and forbids the Arbitrators, and likewiſe the Umpire, to proceed in making any Award; but not notwithſtanding, the Umpire awards the Party 380 *l.* yet the Court will not ſet aſide the Award, though it was objected that 380 *l.* is near the Value of an Eſtate for Life of 70 *l. per*

Annum, there appearing no Fraud or Colluſion in the Matter. *Paſch.* 1683. between *Brown* and *Brown*, 1 *Vern.* 157.

11. If the Arbitrators award a Thing impoſſible, the Award ſhall be ſet aſide; as if they award one to pay a Sum of Money the 24th of *January*, and the Award bears Date after the ſaid 24th of *January*; ſo if it be repugnant; as if they award one to deliver up an Obligation of 800 *l.* in Satisfaction of 400 *l.* of 1000 *l.* which he was to pay, and to vacate a Suit in Satisfaction of 600 *l.* Reſidue, after the 400 *l.* and 600 *l.* ſatisfied. 1 *Chan. Caſes* 87.

Where a Bill was exhibited to have an Execution of an Award, which was performed by neither Party; and the Defendant demurred, becauſe there was no Precedent that a Court of Equity had ever carried ſuch Awards into Execution; and the Demurrer was allowed. *Eq. Caſ. Abr.* 51. *pl.* 9.

If an Account ſtated, and Releaſes are pleaded to a Bill, to ſet aſide an Award, and to have an Account; and Defendant ſwears the Accounts taken by the Arbitrators were true Accounts, but does not anſwer particular Concealments and Frauds alledged in the Bill, the Plea is bad, as the following Caſe will evidence. In 1730. a Bill for an Account was brought againſt Defendant, a Supercargo of the *South-Sea* Company; at the Hearing all Matters were referred, an Award made, and mutual Releaſes executed. Plaintiffs now brought a New Bill, ſuggeſting that ſince the Award they had received Information of Effects to the Value of 119,000 Dollers, concealed by Defendant from the Arbitrators. Defendant pleaded the Award and Releaſes, and anſwered, that the Account taken by the Arbitrators was Fair and Juſt; but did not anſwer to the Concealment particularly mentioned in the Bill. *Talbot* Chancellor: It is a Rule, and ſo are

are the expreſs Words of the Statute, that Awards made between Parties ſhall not be ſet aſide, but for the Corruption or Partiality in the Arbitrators; but there are other Reaſons equally Miſchievous, and proper to be relieved againſt in this Court; as where there is Fraud and Concealment in either of the Parties. It is true Arbitrators are in the Nature of Judges, and in ſome Reſpects have a greater Latitude, not being confined within the Rules of Law or Equity, and therefore may make ſuch Allowances as could not be admitted in Courts of *Judicature*: But as at Law, where Judgments are obtained by Fraud or Surprize, nothing is more common than to ſet the Judgment aſide; ſo upon Decrees Bills of Review are daily brought in this Court, where Evidence ariſes that could not be come at, at the Time of the Decree; there is the ſame Reaſon in the Caſe of Awards; and in this Caſe it cannot be imagined that Defendant had accounted for theſe Matters, ſuppoſing the Fact to be true, for this would have occaſioned a conſiderable Difference in the Award; *ergo* for this Reaſon the Plea was over-ruled, and Defendant put to Anſwer. 2 *Eq. Caſ. Abr.* 80. *pl.* 8.

3 *Vin. Abr.* 140. *pl.* 9. *S. C.* cites it as a *MS.* Caſe, and ſtates it thus: A Bill was brought againſt the Defendant a Supercargo for an Account in 1721. who in his Anſwer ſet forth that there was a Submiſſion and an Award, and Releaſes given. A Bill was now brought to ſet aſide the Award, at leaſt ſo far as related to a particular Parcel of Goods charged to have been ſold by him to *J. S.* Abroad, to the Amount of 10,000 *l.* ſetting forth that Plaintiffs had received an Account of this Tranſaction ſince the Award; and ſuggeſts that Defendant had concealed all this from the Arbitrators omitting it out of the Account laid before them, and that the Sale of theſe Goods were entred in a particular Book,

&c. The Defendant as to Diſcovery and Relief pleaded the former Proceedings, Awards, Releaſes, *&c.* Lord Chancellor ſaid, that the Rule, that Awards cannot be ſet aſide, unleſs for Partiality or Corruption, is too narrow; for if there be Fraud made uſe of by either of the Parties to miſlead the Arbitrators, that is a Reaſon; ſo in Caſe of a Judgment at Law, or a Decree here: And the Facts charged amount to this, as ſuppreſſing the Book, *&c.* and omitting Goods out of Account laid before Arbitrators. Defendant denies ſuppreſſing the Book by Anſwer; but if he did ſell, and not enter, or not diſcloſe, that amounts to the ſame Thing; and the Defendant is affected by this as well as the other. The Plea goes too far, being for Relief as well as for Diſcovery: For if Defendant be not bound to Diſcover, yet if Plaintiffs can prove their Caſe, it is too much to ſay they are not intitled to Relief. *Eq. Caſ. Abr.* 77. *pl.* 16. but not *S. P.*

Bill to ſet aſide an Award made purſuant to a Rule of Court in *B. R.* for Miſbehaviour in the Arbitrators upon this Caſe. The Plaintiff and Defendant entred into Arbitration Bond, and ſubmitted to make it a Rule of Court, and an Award was made purſuant to the Submiſſion by Rule of Court; but the Plaintiff not liking the Award, applied to the Court of *B. R.* to ſet aſide the Award, and made ſeveral Objections to it; and the Court being divided in Opinion, a Rule was made to hear Counſel why the Award ſhould not be ſet aſide, and afterwards that Rule was diſcharged; but the Court being divided in Opinion, the Plaintiff could not obtain a Rule for an Attachment for Non-performance of the Award, and therefore brought an Action upon the Arbitration Bond, and got Judgment upon it; and then *Ward* the Defendant at Law brought this Bill to be relieved againſt the Award.

The

The Queſtion was, whether the Plaintiff at Law, not having purſued the Method preſcribed by *Stat.* 9 *W.* 3. *cap.* 15. by Attachment, but has brought an Action upon the Arbitration Bond at Common Law, and has not pleaded the Statute to the Juriſdiction of this Court, whether upon theſe Circumſtances the Court may not proceed to examine the Award, *&c.* The Counſel for the Defendants inſiſted, that the Award being made by Rule of Court, purſuant to the *Stat.* 9 *W.* 3. *cap.* 15. and ſet out to be ſo made by Defendant's Anſwer, and the Defendant ought to have the Benefit of the Statute as well as if he had pleaded it, and the Parties to the Award have no Remedy, but by Application to the Court where the Rule was made; that this Statute was pleaded to the Juriſdiction of this Court *tempore Cowper C.* and the Plea was allowed. Ordered that the Maſter ſhould make a State of the Caſe for the Reſolution of the Court. 3 *Vin. Abr.* 134. *pl.* 18.

When Submiſſion to an Award is by Bond, which is afterwards made a Rule of Court, the Court will allow the ſame Objection to the Award as they would do when the ſame came before them on an Action on the Bond; otherwiſe there might be a Contradiction; but when a Submiſſion is only by Rule of Court, that Court will not receive Objections to it; for it is the ſame as if the whole had been in the Rule; and the Court will not relieve when the Matter has been examined by another Court that had Juriſdiction, unleſs the Equity be that ſome Matter of Fraud in the Award hath come to the Knowledge of the Party ſince the former Examination, which did not appear before the other Court; *per* Lord Chancellor, who had taken formerly the ſame Diſtinction in *B. R. Ibid. pl.* 19.

Bill to ſet aſide an Award, and to be relieved againſt an Action at Law on the Bond of Submiſſion. The Defendant pleaded as to ſo much of the Bill as ſought to ſet aſide the Award, and ſtaying the Defendant's Proceedings at Law, and he ſet forth the Submiſſion, and Award to be fairly made, *&c.* But the Plea was over-ruled, becauſe it covered too much; for the Plaintiff, in all Events, is intitled to Relief againſt the Penalty of the Bond, though the Merits are with the Defendant. 3 *Vin. Abr.* 135. *pl.* 7. in Notes. But *Quære*, if the Money awarded had been equal to or exceeded the Penalty of the Bond, whether then the Plaintiff is not intitled to any Relief.

Bill was for an Account, and to impeach an Award made between Plaintiff and Defendant *Bercher*, touching a Partnerſhip in buying and ſelling Diamonds in Frame in 1719. and the Bill was againſt the Arbitrators, as well as the Party; Defendant *B.* (the Party) as to the Account, *&c.* pleads the Award, *&c.* and the Arbitrators as to a Diſcovery of ſeveral Particulars prayed by the Bill, and as to any Relief againſt them, plead the Submiſſion, and that by Conſent it was made an Order of this Court, *&c.* Lord Chancellor allowed the Plea of the Party of the Award to the Account, *&c.* but over-ruled the Plea of the Arbitrators, as covering too much, (*viz.*) ſeveral Particulars which might tend to ſhew a Partiality, *&c.* in their Proceedings, *&c. Nota*, in Debate of the Caſe it was argued, that an Award made upon a Submiſſion purſuant to the *Stat. W.* 3. could not be ſet aſide, but for Partiality or Corruption in the Arbitrators complained of within two Terms after the Award made, and in the preſent Caſe, though the Act of Parliament was not particularly relied upon, yet it appeared that the Submiſſion was made an Order of this Court, and that was ſaid to be ſufficient to

bring it within the Statute; but the Bill was filed within a few Days after, ſo that no Advantage could be taken of not complaining according to the Act within two Terms, *&c.* and it was urged, though the two Terms do elapſe before any Complaint, yet that does not ouſt this Court of Juriſdiction and Power to ſet the Award aſide at any Time for Miſbehaviour, *&c.* And a Cauſe of *Ward* and *Walker* was cited by Mr. Attorney General, of an Award ſo ſet aſide by Lord *Macclesfield*, which had been made under a Submiſſion made a Rule of Court. But Lord Chancellor ſeemed to doubt of it, as thinking the Act of Parliament giving two Terms, *&c.* concluded all Courts, and all Manner of Equity, *&c.* 3 *Vin. Abr.* 139. *pl.* 38.

Quære the Caſe of *Ward* v. *Walker*, if the Bill there was not brought within the two Months?—*Barnard. Rep.* in *B. R.* 152. *Paſch.* 2 *Geo.* 2. *Alardes* v. *Cambel* and *Williams* in the Exchequer, ſays the Opinion of the Chief Baron was, that Courts of Equity are not confined to allow of Exceptions to Awards within the Time preſcribed by the Act of *W.* 3. as Courts of Law are; and that *Hale* and *Comyns* Barons agreed, but that *Carter* Baron differed. *Burb. Rep.* 265. *pl.* 342.

CHAP.

CHAP. VIII.

Of Submiſſions made a Rule of Court, and Awards made thereupon.

AWARDS have frequently been made on Submiſſions, made a Rule of Court before the Statute 9 & 10 *W.* as appears by ſeveral Caſes. *Sid.* 54. *T. Raym.* 35, *&c.*

And the Expediency and Uſefulneſs of this Method in procuring the Parties a ſure and ſpeedy Remedy, being often experienced, was a Motive which contributed to the making the ſaid Statute; as well as that thereby any Doubt or Diſpute ariſing about the granting Attachments upon Non-permance of the Award, or Revocation of the Submiſſion, ſhould be wholly removed.

For before the making of the ſaid Statute, the Courts were not ſo ready in granting Attachments; and in ſome Caſes doubted whether any could be granted at all, as appears by the following Caſe.

An Action of Trover and Converſion being brought for a Ship's Tackling, *&c.* and ſeveral Actions of Treſpaſs were, by the Conſent of all the Parties, ſubmitted to the Determination of Chief Baron *Hale*; and ſuch Submiſſion was made a Rule of Court; but before the making the Award, the Party againſt whom the Action was brought revoked the Submiſſion; and though it was ſtrongly urged that this is ſuch a Contempt, for which the Court has ſeveral Times granted Attachments, yet they refuſed it in this Caſe, and ſaid, the Party grieved

grieved may bring his Action on the Caſe. 1 *Sid.* 452.

But now by the 9th and 10th of *Will.* *chap.* 15. it is enacted, *That it ſhall and may be lawful for all Merchants and Traders, and others, deſiring to end any Controverſy, Suit or Quarrel, Controverſies, Suits or Quarrels, for which there is no other Remedy but by Perſonal Action or Suit in Equity, by Arbitration to agree, that their Submiſſion of the Suit to the Award or Umpirage of any Perſon or Perſons, ſhould be made a Rule of any of his Majeſty's Courts of Record, which the Parties ſhall chuſe, and to inſert ſuch their Agreement in their Submiſſion, or the Condition of the Bond or Promiſe, whereby they oblige themſelves reſpectively to ſubmit to the Award or Umpirage of any Perſon or Perſons; which Agreement being ſo made, and inſerted in their Submiſſion or Promiſe, or Condition of their reſpective Bonds, ſhall or may, upon producing an Affidavit thereof, made by the Witneſſes thereunto, or any one of them, in the Court of which the ſame is agreed to be made a Rule, and reading and filing the ſaid Affidavit in Court, be entred of Record in ſuch Court, and a Rule ſhall thereupon be made by the ſaid Court, that the Parties ſhall ſubmit to, and finally be concluded by the Arbitration or Umpirage which ſhall be made concerning them by the Arbitrators or Umpire, purſuant to ſuch Submiſſion; and in Caſe of Diſobedience to ſuch Arbitration or Umpirage, the Party neglecting or refuſing to perform and execute the ſame, or any Part thereof, ſhall be ſubject to all the Penalties of contemning a Rule of Court, where he is a Suitor or Defendant in ſuch Court; and the Court on Motion ſhall iſſue Proceſs accordingly, which Proceſs ſhall not be ſtopped or delayed in its Execution, by any Order, Rule, Command or Proceſs of any other Court, either of Law or Equity, unleſs it ſhall be made appear on Oath to ſuch Court, that the Arbitrators or Umpire miſbehaved themſelves, and that ſuch Award, Arbitration,*

The Court held that on this Statute, they could not receive any Complaint to ſet aſide an Award, till the Submiſſion was made a Rule of Court, and that a Conſent in the Submiſſion Bond to make the *Award* a Rule of Court inſtead of the Submiſſion would not warrant their interpoſing. 2 Stra. 1178.

ration, or Umpirage, was procured by Corruption or other undue Means.

And be it further enacted by the Authority aforeſaid, *That any Arbitration or Umpirage, procured by Corruption or undue Means, ſhall be judged and eſteemed void and of none Effect, and accordingly be ſet aſide by any Court of Law or Equity, ſo as Complaint of ſuch Corruption, or undue Practice, be made in the Court where the Rule is made for Submiſſion to ſuch Arbitration or Umpirage,* * before the laſt Day of the next Term, *after ſuch Arbitration or Umpirage made and publiſhed to the Parties: Any Thing in this Act contained to the contrary notwithſtanding.*

The Limitation of Time of complaining againſt Awards to the laſt Day of next Term, extends not to ſuch as are made in Purſuance of a Rule of Niſi Prius, but only where the Submiſſion is by Obligation. Stra. 301. Barnes 41. It was ſaid by the Court of C. B. that where the Objections ariſe upon the Face of the Award, they may be made at any Time; but where the Party complains of Corruption or ill Practice, he muſt do it within the ſecond Term. Barnes 43.

As this Statute has removed any Doubt that might have been, concerning the Power of the Courts in enforcing the Performance of Awards made on Submiſſions by Rule of Court; and as Awards have ſince been moſt frequently made according to the Directions of the ſaid Act, I ſhall in this Chapter conſider;

Sect. I. How the Submiſſion is to be made a Rule of Court.

Sect. II. What ſhall be a Breach of the Rule.

Sect. III. The Method of enforcing the Performance of Awards, made purſuant to a Rule of Court.

Sect.

Sect. IV. What shall excuse the Non-performance of the Award.

SECT. I.

How the Submission is to be made a Rule of Court.

1. THE Parties may signify their Consent in Court, when the Matters in Controversy are submitted to the Determination of the Foreman, or a certain Number of the Jury; or they may do it by adding a Clause at the end of the Bonds of Submission and their Conditions; or they may signify their Consent by signing a Note or Memorandum in Writing, for that Purpose, in the Presence of one or more Witnesses.

2. When they signify their Consent by adding it to the Bonds of Submission, the Words may be in this Manner:

And it is hereby agreed by and between the said Parties, that these Presents, and the Submission hereby made of the said Matters in Controversy, shall be made a Rule of his Majesty's Court of King's Bench, *to the End the said Parties in Difference shall be finally concluded by the said Arbitration, by these Presents intended, pursuant to the late Act of Parliament in that Case made and provided.*

3. Or if there are no Bonds of Submission, the Parties may signify their Consent thus:

Memorandum *this first Day of*, &c. A. B. *and* C. D. *being desirous to end and determine divers Controversies, Suits and Quarrels, that have been between them (for which there is no other Remedy but*

by

by Perſonal Action or Suit in Equity) did agree to ſubmit, and did ſubmit and refer all the ſaid Controverſies, Suits and Quarrels, to the Award of E. F. *and* G. H. *Arbitrators indifferently choſen between them, to be made in Writing, under the Hands and Seals of the ſaid Arbitrators, before the,* &c. *Day of,* &c. *next enſuing; and the ſaid Parties did mutually promiſe and oblige themſelves reſpectively, that they will perform and execute ſuch Award as the Arbitrators ſhall make in the Premiſſes: And the ſaid Parties did further agree, that their ſaid Submiſſion ſhould be made a Rule in his Majeſty's Court of* Common Pleas (*or* King's Bench) *at* Weſtminſter; *and that they will finally be concluded by the Arbitration that ſhall be made concerning the Premiſſes, by the ſaid Arbitrators, purſuant to ſuch Submiſſion.*

4. The Parties thus conſenting, Affidavit muſt be made thereof; which being moved by Counſel, the Court will of Courſe grant the Motion, and make it a Rule.

5. A Submiſſion was to an Award by Bond, and in the End of the Condition of the Bond was this Clauſe: *And if the Obligor ſhall conſent that this Submiſſion ſhall be made a Rule of Court, that then,* &c. Upon Motion to make this Submiſſion a Rule of Court, according to the new Act of Parliament, it was oppoſed, becauſe theſe Words do not imply his Conſent; but if he would forfeit his Bond, he need not let it be made a Rule of Court; yet becauſe this Clauſe could not be inſerted for no other Purpoſe, the Court took theſe conditional Words to be a ſufficient Indication of Conſent, and made the Award a Rule of Court. Between *Baily* and *Cheeſely*, 13 *W.* 3. *Salk.* 72. *pl.* 8. Ld. *Raym.* 674. *Com. Rep.* 114.

6. A Matter being referred by Rule of Court, to the Determination of the Judges of Aſſize, it was

was moved, that the Judges Determination might be made a Rule of Court. *Et per Holt*, Chief Juſtice, Where a Matter is referred to Arbitrators by Rule of Court, and they make their Award, we will compel a Performance of it, as much as if the Award were Part of the Rule; ſo a new Rule is needleſs. *Salk.* 71. *pl.* 6. *Note*; The conſtant Practice is to make the Rule at *Niſi Prius* a Rule of the Court above, which is always granted on Motion. *Bac. Abr.* 134.

SECT. II.

What ſhall be a Breach of the Rule.

1. NOT only the not performing the Award is a Breach of the Rule, but likewiſe, if either of the Parties ſhall do any Act which may prevent the Arbitrators from making the Award; as, if they revoke the Authority, *&c.*

2. A Matter was referred by Conſent at *Niſi Prius*, to the three Foremen of the Jury, and before the Award was made, one of the Parties ſerved the Arbitrators with a *Subpœna* out of Chancery, which hindered the Proceeding to make the Award: And the Court held this a Breach of the Rule, and granted an Attachment, *niſi cauſa*. Between *Davila* and *Almanza*, 1 *Ann.* 1 *Salk.* 73.

3. Upon a Submiſſion to the Award of the three Foremen of the Jury, who made their Award, the Defendant moved to ſet it aſide, becauſe they went on without giving him Time to be heard, or produce a Witneſs; and *Holt* ſaid, That the Arbitrators being Judges of the Parties own chuſing, the Party ſhall not come and ſay, they have not done him Juſtice, and put the Court to examine it; *aliter*,

when

when they exceed their Authority: However, the Award was examined and confirmed; and the Plaintiff moved for an Attachment for not performing it; and the Court held, That the Non-performance, while the Matter was *ſub Judice*, was no Contempt; and then the Plaintiff moved for his Coſts, and that was denied; upon which *Powel*, Juſtice, ſaid, that ſeeing they could not give the Party any Coſts, he ſhould never be for examining into Awards again. Between *Morris* and *Reynolds*, 2 *Ann.* 1 *Salk.* 73.

4. Upon a Submiſſion by Order of Court to a Reference, and the Award to be made to be confirmed by the Decree of the Court, without Appeal or Exception; yet upon Debate, Exceptions to the Award were admitted. 2 *Vern.* 109.

SECT. III.

The Method of inforcing the Performance of Awards, made purſuant to a Rule of Court.

Enforcing an Award by Attachment is deſcretionary. Stra. 695.

1. WHEN the Award is made, if one of the Parties refuſe to perform it, the other muſt move the Court for an Attachment to compel him; which Motion muſt be founded on an Affidavit, that the Award was made according to the Terms of the Submiſſion; and muſt likewiſe ſet forth, That the Party who moves for the Attachment, has performed what on his Part was awarded to be done, previous to any Thing to be done by the other Party; but the Award it ſelf need not be annexed to ſuch Affidavit. And *Note*, That upon the firſt Application the Court grants a Rule, that the Party ſhall ſhew Cauſe why an Attachment ſhould not be granted by ſuch a Day; which if

if he neglects to do, the Rule upon a second Motion for that Purpose will be made absolute.

2. When the Defendant is taken on an Attachment, he gives a Bail-Bond to the Sheriff, and at the Return of the Writ, appears not by Attorney, but Personally in Court; and then enters into a Recognizance to appear there *de die in diem*, till the Court shall otherwise determine them; upon Motion by Counsel the Court Orders, that unless his Adversary exhibits Interrogatories against him within four Days after Notice, he shall be discharged; the Interrogatories must be filed with the Secondary of the Office, and by him the Defendant must be examined, being first sworn before a Judge to depose the Truth; after his Examination the Prosecutor takes Copies of his Depositions, and if he finds all denied, he brings up his Witnesses to prove the Contempt *viva voce* in Court where the Defendant must appear to confront them, and answer the Questions the Court shall demand; and if the Court judge him guilty of the Contempt, they commit him; if not, he is discharged: If he neglects to appear before the Secondary to be examined, or afterwards before the Court upon his Purgation, the Court, on Motion, will order his Recognizance to be estreated: If he confesses any Thing material in his Depositions, it is not necessary to send for Witnesses, but move on his Confession, and pray the Court's Order therein.

3. *A.* having bound himself to stand to the Award of *J. S.* which Submission was made a Rule of Court, according to the Act of Parliament; the Party for whose Benefit the Award was made, moved the Court for an Attachment for Non-performance; which was granted: Pending that, he brought an Action of Debt upon the Bond, and it was moved that he might not be allowed to proceed both ways; and it was endeavoured to be likened

Cas. Temp. Hardw. 106. Cunningh. Rep. 160. S. P. 2 Barnard. B. R. 227. See 10 Mod. 333.

to the Cases where the Court stay Actions on Attornies Bills, while the Matter is under Reference before the Master; but the Motion was denied; and this Diversity taken, where the Court relieves the Party by way of Amends in a summary Way; as in the Case cited there it is reasonable; otherwise here, where the Plaintiff has no Satisfaction upon the Attachment; and the Defendant was put to answer Interrogatories. 1 *Salk.* 73, 74.

Motion was made for an Attachment for Non-performance of an Award; and *per Cur'*, there must be a positive Affidavit of personal Notice of Award and Demand of the Money all at one Time, because it brings the Party into Contempt; but if the Party keeps out of the way on Purpose, there must be an Affidavit thereof, and of endeavour used to find him out and serve him; and it is but of late that Attachments have been the Means to compel the Performance of Awards; but the old Remedy was Case. 12 *Mod.* 257. 2 *Barnes* 55. *S. P.*

Award made by Rule of Court that Money should be paid on one side, and nothing awarded on the other; the Court will not grant Attachment till a Release be tendered. 12 *Mod.* 234.

A Submission to an Award being by Rule of Court, an Attachment was moved for Non-performance; *per Cur'* there ought to be Affidavit of Award demanded, and we never grant an Attachment for Non-paymnet of Money upon an Award the first Day, though the Defendant be to do the Act first. 12 *Mod.* 317.

The Court was moved to make a Submission a Rule of Court; but denied, because the Affidavit set forth that the Award was made pursuant to the Submission, and the Award was then produced; and *Trevor* Chief Justice said, that since the Award was made they would not make the Submission a Rule of Court wirhout seeing the Award, whether it

it was a good and legal one. 3 *Vin. Abr.* 133. *pl.* 12.

When it is moved to have Submiſſion to an Award made a Rule of Court, there ought always to be an Affidavit of Notice, becauſe the Act gives the Court Power to examine the Juſtice of the Award. 12 *Mod.* 525.

The Court will not make a Submiſſion to Arbitration a Rule of Court, upon a Conſent only that the Award ſhould be made a Rule of Court; and it was ſaid that the like had been often refuſed. 2 *Barnard. K. B.* 163.

Upon Affidavit that the Original Award was loſt by coming up in the *Briſtol* Mail, which was robbed; Motion upon Copy, and Rule for an Attachment *Niſi*, *&c. Stra.* 526.

4. If a Rule be made at *Niſi Prius*, to refer a Matter to the three Foremen of the Jury, and that the Plaintiff ſhall have a Verdict for his Security; after the Award made, the Plaintiff may either enter up Judgment on the Verdict, or have an Attachment for not obeying the Rule of Court, it being in his Election which Way he will execute the Award: and this was affirmed by Mr. *Northey*, and at the Bar, to be the conſtant Practice; *Tourton* and *Gould* (in the Abſence of the Chief Juſtice) doubted of it, becauſe the Verdict ſtood ſtill on Record: To which *Northey* anſwered, There could not be a Judgment entered on ſuch Verdict without Leave of the Court, and the Attachment was granted. Between *Hale* and *Miſter*, 11 *W.* 3. 1 *Salk.* 84.

5. A Matter in Difference having upon the Hearing been referred by the Court to Gentlemen in the Country, who had made an Award therein, the Cauſe was ſet down to be heard upon the Matter of the Award, but was thrown off, as coming on irregularly, for that the Plaintiff ought firſt to have

moved to confirm the Award, as is done upon a Maſter's Report, and either Side may except to it, if they find Occaſion; and then the Matter will properly come before the Court on theſe Exceptions. 1 *Vern.* 469. *Note*, This was before the Act of Parliament.

6. *A.* and *B.* having ſubmitted to an Award, which was made a Rule of Court, and an Attachment iſſued out againſt *A.* for not performing the Award; *A.* was afterwards found a *Lunatick*, and *B.* took out a *Subpœna Scire Facias* againſt the executrix and Heir, to carry on the Rule of Court to an Execution; and it was held by the Court, That the Act of Parliament directing it to be carried on by Attachment, as is done in other Courts, for diſobeying a Rule of Court, by the Death of the Party the Attachment is gone, and the Remedy loſt. 2 *Vern.* 444.

A parol Award held good, and an Attachment granted for Non-payment of Money purſuant thereto. *Barnes* 40.

Motion on Behalf of *Rudd*, that a Submiſſion between the Parties contained in the Condition of Arbitration Bonds might be made a Rule of Court, and produced the Bond Executed by *Coe*. *Per Cur*ᵗ: Be it ſo, *Coe*'s Conſent is ſhewn by the Bond Executed by him, and the Motion is made on Behalf of *Rudd*. *Barnes* 40.

Motion to make a Submiſſion between the Parties a Rule of Court purſuant to the Statute 9 & 10 *Will.* 3. Objected that the Agreement to make the Submiſſion a Rule of Court was no Part of the Condition of the Bond, but was thereunder-written, and not ſigned; but it appearing by Affidavit that the Subſcription was made before the Execution of the Bond, it was taken by the Court to be Part of the Submiſſion, as an Indorſement by way of Defeazance

feazance is Part of the Deed; and the Submiſſion was made a Rule of Court. *Barnes* 40.

SECT. IV.

What ſhall excuſe the Non-performance of the Award.

1. THE Arbitrators being Judges of the Parties own chuſing, the Law will not countenance any Complaints by Reaſon of Severity or Inequality in the Award; neither will the Court require ſuch Exactneſs as to the Formality of the Award when the Submiſſion is made a Rule of Court, as if it were by Bond or otherwiſe, and therefore there muſt be ſome notorious Defect in the Award it ſelf, or ſome Fault in the Arbitrators, ſuch as Partiality, *&c.* which will excuſe the Party from not performing it.

2. However, it is neceſſary that the Arbitrators, as in other Caſes, enter on their Duty, and make their Award within the Time allotted them by the Submiſſion.

3. And that if there be an Umpire, that he makes not his Umpirage till the Time allowed the Arbitrators be expired.

4. As where the Submiſſion to an Award was, ſo that the Arbitrators make their Award at or upon the 27th of *March* then next enſuing; and if they make no Award, then if the Umpire make his Umpirage on the ſame Day; it was reſolved, that the Umpire could not make his Umpirage on the ſaid 27th of *March*, the Arbitrators having all that Day to make their Award. 2 *Vern.* 100.

5. But herein a Diverſity is taken, when the Umpire is named in the Submiſſion, and when the Arbitrators have a Power of nominating him; for

in the first Case, the Umpire can by no Means make his Umpirage, by Reason of the Inconveniency of having a concurrent Jurisdiction. 1 *Salk.* 71.

6. But if the Arbitrators are to name him, he may make his Umpirage on the same Day limited to the Arbitrators, and it will be good, for they had determined their Power before, by chusing an Umpire. 1 *Lev.* 174. 1 *Salk.* 72.

7. The Umpire must be chosen upon Condition that he does accept the Umpirage; for it is said, that if the Arbitrators chuse one, their Authority is executed, and they cannot revoke or chuse again, though the Person elect refuse to accept. 1 *Salk.* 70. But of this see the 6th Chapter.

8. It is held by my Lord Chief Justice *Holt*, That where an Award is made by Rule of Court, it shall not be set aside, unless there was Practice with the Arbitrators, or some Irregularity; as want of Notice of the Meeting; also you shall not take Exceptions to the Formality of it, but shall perform it. 1 *Salk.* 71.

9. It was likewise held by *Holt*, That an Attachment lies not for not performing an Award made upon a Rule of Court, without a Personal Demand; and he said, he remembred the first Attachment of this Kind, which was in Sir *John Humble*'s Case, in *Kelyng*'s Time; in which, and ever since, a Personal Demand has been thought necessary; and said further, that in such Cases of Awards, though they be not legally good, attachment lies for Non-performance; *aliter* if impossible; but the Party is excused as to that Part which is impossible only. Between *Forster* and *Brunetti*, 1 *Salk.* 83.

10. But if Money be awarded to be paid such a Day, at a certain Place, between the Hours of Twelve and Two, it is sufficient for the Party to shew,

ſhew, that he attended at the Time and Place aforeſaid, and that there was no Body to pay him.

11. If the Award be not in Writing, the Party ſhall be excuſed, whether the Terms of the Submiſſion required it or nor, the Judges thinking it improper to allow of a Matter which lays ſo great a Foundation for Perjury.

12. An Award was ſet aſide, the Arbitrators appearing to have an Intereſt in the Cargo, touching which the Award was made, and therefore put too great a Value thereon; and in five Days after the Award made, the Money awarded was attached by the Arbitrators, for Debts owing to them. 2 *Vern.* 251.

13. And in this Caſe a Precedent was quoted, where an Award was ſet aſide, becauſe the Arbitrators had promiſed to hear Witneſſes, but made their Award before they had ſo done.

14. And likewiſe another Precedent, where the Arbitrator promiſed not to make his Award till one of the Parties (who was not well) ſhould come abroad; but notwithſtanding proceeded, and my Lord *Nottingham*, for that Reaſon, inclined to ſet it aſide.

15. When a Submiſſion is unto three, or any two of them, if two by Fraud or Force will exclude the other, that alone is ſufficient to vitiate the Award. 2 *Vern.* 515.

16. If it appears that the Arbitrators went upon a plain Miſtake, either as to the Law, or in a Matter of Fact, the ſame is an Error appearing in the Body of the Award, and ſufficient to ſet it aſide. 2 *Vern.* 705.

CHAP. IX.

Pleadings in Awards and Arbitraments.

AS Pleading in general is allowed to be the moſt nice and difficult Part of our Law, and as an infinite Number of Cauſes of all Kinds have been loſt or delayed for want of a right Obſervance of the Rules of Pleading, it is neceſſary in the Caſe of Awards, (which has partaked of theſe Difficulties as much as any other Branch whatſoever) to be cautious and exact in all the Proceedings, particularly in ſetting forth the Award, and aſſigning a Breach; otherwiſe, let it be in other Reſpects ever ſo conformable to the Rules of Law, the Party will be diſappointed of his End, if he fail in this Particular; it is therefore neceſſary to conſider the following ſeveral Parts of the Pleadings, diſtinctly and ſeparately.

Sect. I. Concerning the Declaration, and the Manner of ſetting forth the Award therein.

Sect. II. Concerning the Plea of the Defendant, whether relating to the Performance of the Award, or when, and in what Manner he may plead the Award in Bar of any other Action.

Sect.

Sect. III. Of the Replication and Manner of setting forth the Award, and assigning a Breach.

Sect. IV. Of the Rejoinder, when it shall be a Departure or not.

Sect. V. Of Demurrers, either to the Declaration, Plea, Replication, &c.

Sect. VI. Precedents of Pleadings in Awards.

SECT. I.

Concerning the Declaration, and the Manner of setting forth the Award therein.

1. A Declaration is a Complaint of the Party grieved, setting forth the Cause of his Action against the Person he supposes to have done him wrong, or by whom he has received some Damage.

2. The Declaration ought to be true, clear and certain, and this Certainty ought to be sufficient in three respects: As 1st, Where on an Issue being joined the Jury may give a Verdict without being inveigled. 2dly, Sufficient Certainty to which the Defendant may answer directly. And 3dly, Whereon the Court may judge certainly and truly.

3. The Plaintiff generally declares on the Bond of Submission, in which Case he is not obliged therein to set forth the Award; and for which Reason

Reaſon we have but few Caſes relating to the Manner of ſetting forth the Award, when the Submiſſion is by Bond before the Plea or Replication.

4. But if an Action be brought on the Award it ſelf, the Party muſt be very careful how he ſets it forth in his Declaration; at leaſt he muſt ſhew the Subſtance of it, and eſpecially that Part which intitles him to his Action.

5. If in an Action of Debt upon an Award, the Plaintiff declares, that the Arbitrators did make an Award, that the Defendant ſhould pay unto the Plaintiff 10 *l. &c.* this is a good Declaration, though nothing is ſhewn to have been awarded on the other Side; for it is ſufficient for the Plaintiff to ſet forth that Part of the Award which entitles him to his Action. 1 *Leon.* 72.

6. In the Declaration it is not neceſſary to lay the Time or Place where the Award or Submiſſion were made; but if the Defendant denies either, the Plaintiff may reply, that the Award or Submiſſion was made at ſuch a Place. 2 *Brownl.* 137.

7. But when an Award is pleaded in Bar of a Treſpaſs, a Plea muſt be laid where the Submiſſion was made. *Cro. Eliz.* 66.

2 L. Raym. 762, 763. S. P.

8. It has been adjudged, that the Plaintiff need not ſet forth a *Profert* thereof *in Curia*, becauſe it is no deed. *Style* 459.

9. If there be a Submiſſion to the Award of *J. S.* ſo as the ſaid Award be made under his Hand and Seal, at or before the 5th Day of *September* following, ready to be delivered at the Shop of *J. N.* in the *Exchange*, *London*; and in an Action of Debt upon an Award made thereupon, the Plaintiff declares that the ſaid *J. S.* under his Hand and Seal the 4th Day of *September* following, *apud Caſtrum Eborum*, did make an Award *ad tunc & ibidem parat'* to be delivered at the Shop of the ſaid *J. N.* in the *Exchange*, *London*; this is no good Declaration;

ration; for the Parties are not bound to take Conuſance of the Delivery elſewhere than at the Place appointed; by *Dod.* and *Houghton*, *contra Mountague*, Chief Juſtice, who held the Publication there, and Allegation, that it was ready to be delivered at the ſaid Shop in *London*, was well enough. *Cro. Jac.* 577.

10. In Debt upon a Bond, conditioned for the Performance of an Award, *ita quod* it be made, and ready to be delivered to the Parties, at a certain Day and Place; the Defendant pleads *Nullum fecerunt Arbitrium*, and the Plaintiff replies and ſets forth an Award made and delivered to the Parties at another Day and Place. Adjudged that this is good, being delivered to the Parties themſelves, though at another Day and Place: But *per Hale*, the Replication is not good, for being but the Execution of an Authority, it ought to be done at the ſame Day and Place. 2 *Lev.* 68.

11. There is a Diverſity taken, when the Plaintiff ſets forth the Award in his Declaration, and when the Defendant pleads it; in the former Caſe. it is ſufficient for the Plaintiff to ſhew, that *inter alia* it was awarded; but when the Defendant pleads it, he muſt ſet forth the whole Award. *Lit. Rep.* 312, 313.

12. In an Arbitrament it was held by the Court, that if two Things be awarded, the one within, and the other not within the Submiſſion, the later is void, and the Breach muſt be aſſigned only upon the firſt. 2 *Mod.* 309.

An Award was, that Defendant pay the Plaintiff ſo much Money at ſuch a Time and Place. In Debt upon the Bond the Plaintiff did not aver that he was ready at the Place to receive the Money; and exception being taken thereto; *Holt* Chief Juſtice held that it needed not, becauſe the Defendant ought to do the firſt Act, and therefore if he does

not

not come and tender the Money, though the Plaintiff be not there to receive it, the Bond will be forfeited. Ld. *Raym.* 533, 534.

In Debt on an Award, a mutual Submiſſion muſt be ſhewn in the Declaration. 2 *Stra.* 923.

SECT. II.

Concerning the Plea of the Defendant, whether relating to the Performance of the Award, or when, or in what Manner he may plead the Award in Bar of any other Action.

1. IF an Action of Debt be brought on the Bond of Submiſſion, the Defendant is eſtopped by the Obligation, and cannot plead *Non ſubmiſit*, but he may plead *Nullum fecerunt Arbitrium*, or he may plead the Award Specially; to which the Plaintiff may Demur or Reply. 1 *Rol. Abr.* 873.

2. In Debt upon a Bond for Performance, *&c.* the Defendant cannot plead Performance generally, but muſt ſhew the Award, and how he has performed it. *Moor* 3.

3. If in Debt upon an Obligation, conditioned for the Performance of the Award of *J. S.* the Defendant pleads, That whereas there was a Suit in Chancery by the now Defendant, againſt the now Plaintiff, for ſuch a Cauſe, *&c.* the ſaid *J. S.* did award, that the ſaid Suit ſhould ceaſe, and that the now Plaintiff ſhould ſtand acquitted *de qualibet materia in eadem contenta*, and avers that he did not any further proſecute the ſaid Suit, but that the now Plaintiff always after *Stetit inde Quietus*; this is a good Plea without ſhewing any Diſcharge *in Facto*; and the Award being, that he *Staret acquietatus*,

quietatus, it is no more than that by that Award he ſhould be acquitted. *Cro. Jac.* 339.

4. If an Award be, to pay the Rent mentioned in ſuch an Indenture, in Debt upon a Bond conditioned for Performance thereof, the Defendant in pleading Performance need not ſet forth the Indenture, but refer generally to it; but if it be to be paid in ſuch Manner and at ſuch Times as is expreſſed in the Indenture, then it muſt be ſet forth at large; ſo if an Award be to pay Money given by a Will. 1 *Vent.* 87.

5. It muſt be ſtrictly obſerved, that where the Defendant pleads Performance, he muſt regularly plead it according to the Words of the Condition.

6. As where the Condition of the Bond of Submiſſion was for Performance of the Award, ſo that it be made *de Premiſſis vel aliqua Parte inde*, and the Defendant pleads, that the Arbitrators made no Award *de Premiſſis*, without ſaying *nec de aliqua Parte inde*, and it ſeemed not to be good. 2 *Mod.* 27.

7. But of Matter of Excuſe, as that it became impoſſible by the Act of God, *&c.* it is otherwiſe. 2 *Mod.* 27, 28. 2 *Salk.* 520.

8. The Condition of a Bond of Submiſſion was, ſo that the ſaid Award be given up in Writing, *&c.* and the Defendant pleaded *non Deliberaverunt in Scriptis*; and it was adjudged naught, and that it ought to have been *non reddiderunt in Scriptis*. *N. Bendl.* 97.

9. Concerning the Defendant's pleading Tender and Refuſal, it muſt be obſerved in general, that where a Man is bound in an Obligation conditioned to pay a certain Sum of Money at ſuch a Day, Tender and Refuſal at the Day, without ſaying *uncore Priſt*, is not a good Plea, but he ought to ſay *adhuc paratus*, and tender the Money in Court. But

10. But it is otherwiſe, if the Condition of the Bond be to do a collateral Act, as to deliver Timber, ſtand to an Award, &c. *Co. Lit.* 207. 9 *Co.* 79. *a.*

11. In Debt upon an Obligation, whereby the Defendant and two others were to perform an Award, made betwixt them and the Plaintiff; the Defendant pleaded the Award, which was, That the Defendant ſhould pay the Plaintiff 20*s.* and each of the others 20*s.* a-piece, and that he tendred the 20*s.* accordingly, which the Plaintiff refuſed to accept.

12. The Plaintiff replied, that at a Day after the Refuſal he demanded the ſaid 20*s.* of the Defendant, which the Defendant then refuſed to pay him; and the Defendant demurred; and it was held that the Replication was idle, for the 20*s.* being a Sum collateral to the Obligation, was loſt for ever by the firſt Refuſal.

13. But then it was reſolved that the Bar was ill, as anſwering only to Part, *ſcil.* the 20*s.* to be paid by himſelf, and not to the other Sums to be paid by others, and he is anſwerable for all; and then the Defendant pleading a collateral Matter, which is inſufficient in Law, the Plaintiff needs not aſſign a Breach; and ſo Judgment was given for the Plaintiff. Between *Genne* and *Tinker*, 3 *Lev.* 24.

14. But Tender of a Sum of Money awarded to be paid in an Action of Debt on the Award, is not ſufficient without pleading *uncore Priſt*; but Tender of an Award to the Defendant, and that none came on his Part to receive it, is good. *Lev. Entr.* 44.

If an Award be made by the Arbitrators, and ſigned and ſealed by them, and by it they award a Sum of Money to be paid, the Defendant cannot plead

plead the Statute of Limitations to an Action brought on the ſaid Award; adjudged, 2 *Sand.* 65.

15. As to the pleading of an Award to an Action, it is laid down as an uncontroverted Rule, that where Accord may be pleaded to any Action, there an Award may. 6 *Co.* 44.

16. It has been held formerly, that an Accord is not any any Bar of an Action, unleſs it be executed, becauſe the Plaintiff hath not any Means to recover that which he ought to have by the Accord. 1 *Rol. Abr.* 129.

17. And therefore it has been held the ſafeſt and beſt way of pleading an Accord, to plead it by way of Satisfaction, and not by way of Accord; for if it be pleaded by way of Accord, a preciſe Execution thereof in every Part muſt be pleaded; and if there be a Failure in any Part, the Plea is inſufficient; but if it be pleaded by way of Satisfaction, the Defendant need plead no more, but that he paid the Plaintiff 10 *l.* in full Satisfaction of the Action which he received. 9 *Co.* 80.

18. Of late, indeed, it hath been held, that upon mutual Promiſes an Action lies, and conſequently there being equal Remedy on both Sides, an Accord may be pleaded without Execution, as well as an Arbitrament. *Raym.* 450. 2 *Jon.* 158.

19. It has been formerly held, that an Award could not, except in certain Caſes, be pleaded to an Action, unleſs it were executed; as where in Treſpaſs the Defendant pleaded an Arbitrament in Bar, that the Defendant ſhould pay to the Plaintiff twenty Shillings, *&c.* to which the Plaintiff demurred, becauſe he did not alledge Performance of the Award, and the Demurrer was allowed. *Cro. Eliz.* 66.

20. So if an Award be to pay Money at a certain Day, in Satisfaction of an Action, if the Money be not paid at the Day, this Award is no good bar

Bar of an Action, though he may have Debt on the Award, becauſe it was his Fault that the Money was not paid, and therefore he ſhall not compel the Plaintiff to bring an Action on the Award, and bar the firſt Action. 49 *E.* 3. 3.

21. But if an Award be, that one ſhall pay 10 *l.* to the other in Satisfaction of all Treſpaſſes, *&c.* if he who ought to pay it tenders it at the Day, and he refuſes, and after brings an Action for the Treſpaſs aforeſaid, this Award ſhall be a good Bar of the Action, becauſe it was his own Fault that it was not paid, and he hath his Remedy for the Money. 1 *Rol. Abr.* 267.

22. So if *A.* and *B.* ſubmit themſelves to the Award of *J. S.* of all Actions; who awards that *A.* ſhall make an Obligation which ſhall be labelled with Wax, and ſhall bring it to *B.* and *B.* ſhall ſeal it to *A.* in Satisfaction, *&c.* if *A.* does never bring the Obligation to *B.* to ſeal, yet this Award ſhall be a Bar of Actions brought by *A.* which are within the Award, though he hath no Means to compel *B.* to enter into an Obligation, becauſe the Default was in himſelf. 5 *E.* 4. 7.

23. In Treſpaſs (ſays my Lord Chief Juſtice *Holt*) it was held heretofore, that an Award of a collateral Thing in Satisfaction, was no good Plea, unleſs the Defendant ſhewed a Performance; for they likened this to an Accord and Satisfaction, which is no Plea, unleſs it be executed; yet they held, that where the Award was not of a collateral Thing, but of a Sum of Money, that ſuch an Award was a good Plea; and the Reaſon of the Difference which they went upon was, that there was a Remedy to be had upon the Arbitrament in the latter Caſe, not in the former: But now the Law is held otherwiſe, and an Arbitrament is a good Plea, whether it be of Money or a collateral Thing

Thing, as a Hat or a Horſe; and the Reaſon is, becauſe the Submiſſion is a mutual Promiſe, upon which an Action lies, and Performance need not be averred in either Caſe, for the Remedy is alike: But *Powel* held, that it muſt be averred where the Award is of a collateral Thing. 1 *Salk.* 76.

24. So when the Plaintiff declared upon three *Aſſumpſits*, whereof two were Special, *ſcilicet*, that the Defendant being indebted to the Plaintiff in ſuch a Sum, he *in conſideratione inde* promiſed to Ship ſuch a Quantity of *Cotton Wool* at *Antegoe*, and conſign it to the Plaintiff; and alſo, whereas he was indebted to the Plaintiff in ſuch other Sum, for Wares and Merchandizes ſold and delivered, he *in conſideratione inde* promiſed to pay the Money to the Plaintiff, if he (the Defendant) did not Ship and conſign ſo much Cotton Wool to the Plaintiff; and the third Promiſe was upon a general *Indebitatus Aſſumpſit* for Wares, *&c.* ſold and delivered.

25. The Defendant pleaded generally as to all (*viz.*) that ſince the ſaid Premiſſes, he and the Plaintiff had ſubmitted themſelves and all Matters, *&c.* to Arbitrators, who made their Award, which he ſet forth in his Plea, and concluded in Bar, without alledging that he (the Defendant) had performed the Award on his Part.

26. And upon a Demurrer to the Bar, it appeared that the Award was particular as to the *Cotton Wool*, and not of any other Matter, and as to that likewiſe it was but conditional, and therefore void: And in arguing this Caſe the following Diverſities were taken by the Court to be Law.

27. 1ſt, That an Award without Performance is a good Bar to an Action on the Caſe, if the Parties have mutual Remedies againſt each other to compel the Execution of the Matters awarded, but

it is otherwiſe where there are not mutual Remedies to enforce the Performance, *&c.*

28. 2dly, That the Award now pleaded, being but conditional, and therefore void, and by Conſequence the Plaintiff having no Remedy to enforce the Performance, 'tis no Bar to his Action.

29. 3dly, This Award being particular, and only concerning the *Cotton Wool*, the Defendant ſhould have pleaded it in Bar only of thoſe Promiſſes concerning the ſaid Wool, and not in Bar of a general *Indebitatus Aſſumpſit* for Wares ſold, but he ſhould have pleaded *non Aſſumpſit* as to that Promiſe, becauſe the Award did not extend to it.

30. But if this Award had been general, and a good Award, the Defendant might have pleaded it in Bar of all the Promiſes generally, as here he had done; and that ſuch Plea would not have amounted to the general Iſſue, becauſe the Defendant, by pleading the Award after the Promiſes made, had admitted the Plaintiff to have Cauſe of Action upon the Promiſes; but that he was barred by the Award, and an Admiſſion even of a Colour of Action, is ſufficient to prevent the Pleading to amount to the general Iſſue, and the Plaintiff had Judgment. *Carth.* 187, 188.

31. And in *Salk.* 69. it has been held, that an Award may be a good Plea in Bar though it be not performed, wherever the Award does give a new Duty in lieu of the former; for a Submiſſion implies a Promiſe to perform; ſo that the Party has a Remedy for that which is awarded; but where the Intent of the Award is not to diſcharge the old Duty of it ſelf, and give a new one, but barely to cauſe a Diſcharge of the old Duty, not by the Award it ſelf, but by a Releaſe, as in the principal Caſe, the Award is no Plea in Bar of the old Duty. But a *Quære* is added, Whether an Award unper-

formed, though it gives a new Duty, can be a good Plea after the Time of Performance is elapſed.

In Indebitatus Aſſumpſit and *Quantum Meruit* for Work done and Goods ſold and delivered, the Defendant pleaded an Award that the Plaintiff for the Work done, *&c.* ſhould accept a Bill of Sale before made of the eighth Part of ſuch a Ship, and that the Plaintiff and Defendant ſhould give to each other general Releaſes. *Holt* Chief Juſtice ſaid that this is the ſame with the Caſe of *Freeman* v. *Barnard*; for as to the Goods ſold and delivered, there is nothing awarded but a general Releaſe; that if the Bill of Sale had been awarded in full of all Demands, it had been good; but this Releaſe awarded here is not a perfect Bar till it be executed. And it having been objected that the Goods ſold and delivered is the ſame Demand with that for Work done, yet *Gould* Juſtice ſaid that the Court cannot take Notice of that upon ſuch a Generality; but that if the Defendant had ſhewn it by particular Averment, it might have been conſtrued to be within that Part of the Award. Judgment for the Plaintiff. Ld. *Raym. Rep.* 611.

Caſe upon three ſeveral Promiſes, and an Award ordering mutual Releaſes was pleaded in Bar. *Per Cur':* It is no good Plea, becauſe nothing is awarded that bears an Action; but if there were any Thing awarded, for the which an Action would lie, it would be a good Plea, though it were not performed; and Judgment *pro Quer'*. 12 *Mod.* 423.

Anciently if an Award was made to pay a Sum, this might have been pleaded in Bar though without Satisfaction, becauſe the Law gave an Action of Debt for the Money upon the Award, and ſo a Remedy; and though that Law be now altered, yet now when two Perſons ſubmit to an Award,

this amounts to mutual Promiſes. *Per Holt* Chief Juſtice. 11 *Mod.* 171.

An Award to pay Money in Satisfaction is pleadable in Bar, though the other Party be not awarded to accept it; for the Award of Payment of Money veſts a Duty in the Party, and is a Bar in Debt, or Treſpaſs, or *Aſſumpſit*. *Per Holt* Chief Juſtice. 2 Ld. *Raym.* 965.

This Diverſity is to be obſerved where an Award conſiſts of divers Things, and one of them is void, and it be expreſly ſaid that upon Performance of that void Thing, the other Party ſhall do ſuch a Thing, there the doing of the void Thing is a Condition precedent, and muſt be averred before Action againſt the other for not doing his Part. But where there be ſeveral Things in an Award, and ſome are good, and others not, and it is further ſaid that upon Performance *præmiſſorum* the other ſhall releaſe for the Purpoſe, there it ſuffices to make Averment of Performance of what is well awarded, without more. 12 *Mod.* 588.

If it appear that a void Part of an Award was intended as a Conſideration of Things being done on the other ſide, it muſt be done, or elſe here is not that Advantage for the other ſide which was deſigned for it, and he has a wrong done him by being forced to pay for a Conſideration which he has not. *Per Trevor* Chief Juſtice. 12 *Mod.* 599.

SECT.

SECT. III.

Of the Replication and Manner of setting forth the Award, and assigning a Breach.

1. IT is necessary for the Plaintiff in his Replication, if the Defendant pleads *Nullum fecerunt Arbitrium*, to set forth the whole Award, or at least so much of it, as that the Court thereby may be able to judge whether he is intitled to his Action, or not; for want of which the Plaintiff has been often delayed, if not disappointed in his Action.

2. As where in an Action of Debt upon a Bond, conditioned for the Performance of an Award, the Defendant pleaded, that the Arbitrators made an Award, That the Defendant should pay to the Plaintiff 3100 *l.* and should give to the Plaintiff a general Release; and the Defendant pleaded that he had paid the Money, and given a Release accordingly, but did not shew what on the Part of the Plaintiff was awarded to be done; and the Plaintiff replied without shewing the other Part of the Award in his Replication, and took Issue, that the Defendant had not paid the Money; and the Defendant put in an insufficient Rejoinder; upon which the Plaintiff demurred; and it was held by the Court, that the Plaintiff could not have Judgment, because the Award, as set forth and agreed in Pleading, is void; but if the Plaintiff would have helped himself, he ought to have shewn the other Part of the Award before he had taken Issue; but the Court would not give Judgment for the Defendant, but suffered the Plaintiff to discontinue, because they apprehended it to be only a Trick in

Pleading; for which the Chief Juſtice reprehended *Sanders*, who excuſed himſelf by reaſon of the Severity of the Award. Between *Veal* and *Warner*, 1 *Sand.* 326, 327.

3. If in Debt upon an Obligation, conditioned for the Performance of an Award, the Defendant pleads *Nullum fecerunt Arbitrium*, and the Plaintiff replies, and ſhews the Award, he muſt alſo ſhew the Breach, without which he hath no Cauſe of Action; for the Obligation is guided by the Condition; and though the Defendant can make no Anſwer to the Breach, yet it ought to appear to the Court that the Plaintiff hath a Cauſe of Action. *Yelv.* 152.

4. And the Reaſon hereof, as ſaid *arguendo*, 1 *Sand.* 102. is, becauſe an Award may be good in Part and void in Part, and perhaps the Action may be brought upon the void Part.

5. If in Debt upon an Obligation conditioned for the Performance of an Award, the Defendant ſhews that the Arbitrators did make an Award, that the Defendant before ſuch a Day ſhould pay to the Plaintiff 100 *l.* or otherwiſe ſhould procure one *A.* being a Stranger, to be bound to the Plaintiff for the Payment of 12 *l. per Annum* to the Plaintiff for his Life; and the Defendant pleads, that he hath performed the ſaid Award; and the Plaintiff replies, that the Defendant hath not paid the ſaid 100 *l.* without ſaying, nor hath procured *A. &c.* yet this is a good Replication, for the Award as to that Part is meerly void, and therefore the Plaintiff need not take Notice thereof. 1 *Leon.* 304.

6. So if the Award be, that the Defendant, together with a Stranger, ſhall enter into a Bond in the Aſſignment of a Breach, the Plaintiff muſt not ſay that the Defendant and Saranger did not enter

into

into a Bond, for though both did not, yet the Defendant alone might enter into Bond. 1 *Godb.* 165.

7. If the Plaintiff alledges that the Award was made of four Things, and the Defendant pleads that it was but of three only, the Plaintiff cannot reply that the Award was of three Things and another, but he ought to reply, that the Award was made of four Things, and traverſe that it was of three Things only. *Plowd.* 95.

8. If in Debt upon a Bond conditioned for the Performance of an Award, ſo as it be made, *&c.* and ready to be delivered to the Parties, or to ſuch of them as ſhall deſire the ſame; the Defendant pleads *Nullum fecerunt Arbitrium*, and the Plaintiff replies and ſets forth the Award, and ſhews a Breach, but doth not ſay that it was ready to be delivered to the Defendant; yet this is a good Replication; for when the Award is made, it is ready to be delivered to the Parties, or to ſuch of them who deſire it; ſo that it muſt be deſired, and if denied, the Party may plead that Matter ſpecially. Between *Rowſley* and *Manning*, 3 *Mod.* 330.

9. If in Debt upon a Bond, conditioned for the Performance of an Award in Writing, or by Word of Mouth, the Defendant pleads no Award made, and the Plaintiff replies, That at the Time of the Bond and Award, he had an Action againſt the Defendant for Scandalous Words, and that the Arbitrators, *ore Tenus*, did declare and publiſh his Award in Manner following, *viz.* that the Defendant ſhould pay to the Plaintiff twelve Guineas, and all ſuch Money as he had expended *circa Proſecutionem Placit' pred'*, *&c.* this is a good Award, and well ſet forth; although the Award doth not mention any Suit before; for he that ſets forth a Parol Award, is not tied to the very Words, but it is ſufficient to ſhew the Effect and Subſtance of

what was awarded by Word of Mouth. 2 *Vent.* 242.

10. In Debt upon a Bond to perform an Award, the Defendant pleads no Award made, and the Plaintiff replied, and ſet forth an Award with a *Profert in Curia*, and there were material Omiſſions; the Defendant craved *Oyer*, and demurred for the Variance between the Award ſet forth in the Replication, and the *Oyer*.

11. And in the Argument it was inſiſted for the Plaintiff, that in Debt on an Award, the Plaintiff need not ſet forth more of the Award than makes for him; to which it was anſwered, that true it is, in Debt upon an Award the Plaintiff need not ſet forth more than makes for him; but it is otherwiſe in Debt upon a Bond, for then the Plaintiff muſt reply the whole Award.

12. And *per Holt*, Chief Juſtice, In Debt upon a Bond to perform an Award, if *nul agard fait* be pleaded, and the Plaintiff replies an Award, *&c.* and Iſſue is thereupon, in ſuch Caſe, if there is a material Variance between the Award given in Evidence, and the Award ſet forth in the Replication, it is againſt the Plaintiff; but if the Variance be only by Omiſſion of that which is void, that is not a material Variance, being no material Part of the Award; here the Variances are by Omiſſions that are material, therefore Judgment muſt be for the Defendant. *A Note is added by the Reporter, That if the Plaintiff had not made a* Profert, *the Defendant's Way had been to have pleaded* Nul tiel agard.

13. In Debt upon an Obligation conditioned to perform an Award, the Defendant pleaded no Award, and the Plaintiff replied and ſet forth an Award, whereby it was awarded, that the Defendant ſhould enjoy a Wharf, and that certain Erections ſhould be pulled down within the Space of 58 Days

Days from the Date of the Award; to which the Defendant demurred; and it was objected, that the Award was pleaded without any Date; but yet the Replication was held good, for the Day of the Delivery of a Deed, is the Day of the Date, though there is no Date set forth; as if a Deed bear Date one Day, and be delivered at another, it was really dated when delivered, though the Clause of *Geren' Dat'* be otherwise; so it is in the Case of the Award, the making is the Date. 1 *Salk.* 76.

14. In Debt upon a Bond for Performance of an Award, *ita quod* the Award be made and *ready to be delivered* to the Parties in Difference, or to such of them who should desire the same, by such a Time, the Defendant pleaded no Award made.

15. The Plaintiff replied, that the Arbitrators within the Time, *&c.* made their Award in Writing, which he set forth at large, and assigned the Breach, *&c.* but did not say that the Award was ready to be delivered to the Parties, according to the Words of the Submission *supra.*

16. And it was objected upon a Demurrer for this Fault, that the Submission being conditional, it should appear that this Condition was performed by the Arbitrators; otherwise their Award would not oblige the Parties; and therefore the Plaintiff ought to shew, that all the Condition was performed; otherwise he hath no Cause of Action.

17. But it was held in this Case, that it shall necessarily be intended, that the Award which was in Writing, was ready to be delivered to the Parties, and therefore good, and the rather, because the Condition is, that it ought to be ready to be delivered when any of the Parties required it; and it doth not appear that it was required by any of

them, and therefore it is not requiſite it ſhould be delivered before Requeſt. *Carth.* 158, 159.

Where the Matters awarded are diſtinct, and not the one depending on the other, there the Award may be good as to one Part, and void againſt the other; and in that Caſe the Breach muſt be aſſigned in that Part that is good; *per Cur'*. 12 *Mod.* 585.

An Award was that all Suits ſhould ceaſe between *A.* and *B.* Reſolved that the Proſecution of a Suit by *A.* againſt *B.* and *C.* is no Breach. 10 *Mod.* 205.

SECT. IV.

Of the Rejoinder, when it ſhall be a Departure, or not.

1. A Rejoinder is, when the Defendant fortifies his Bar with new Matter, but purſuant to the Bar. *Co. Lit.* 304.

2. And herein great Care muſt be taken that the Rejoinder be not a Departure from the Defendant's Plea, introducing new Matter, which had no Relation to his Plea.

3. And for this Reaſon it is ſaid, that the Defendant is not to rejoin in ſuch Words as are not contained in the Replication or Plea, for that is to begin a new Diſcourſe of his own, and not to anſwer the Plaintiff.

4. Alſo, if the Defendant in his Rejoinder pleads new Matter, he muſt conclude, *& hoc Paratus eſt verificare*; for he ought to give the Plaintiff Liberty to come in with a Surrejoinder and Anſwer to it.

5. Yet it is ſaid, that in many Caſes, if new Matter be averred in the Replication, if the Defendant alledges

ledges a new Anſwer in the Rejoinder, it is no Departure. 1 *Mod.* 43, 44.

6. As where the Condition of an Obligation was, that the Defendant ſhould ſtand to the Award of *J. S.* between the Defendant and *J. D.* Tenants, and the Defendant pleads *Nullum fecerunt Arbitrium*; and the Plaintiff replies, that the Award was made between the Defendant and Tenants of *J. S.* and names them; and the Defendant rejoins, that they were not Tenants; this was ſaid to be no Departure, but good; and the Reaſon ſeems to be, for the Plaintiff alledged Matter, which gave Occaſion for ſuch Plea. 39 *H.* 6. 16.

7. In Debt upon a Bond conditioned for the Performance of an Award, the Defendant pleaded an Award to pay ſuch a Sum to the Plaintiff at ſuch a Time and Place, and that he tendred it accordingly, and the Plaintiff refuſed to accept it; and the Plaintiff replied, that it was awarded in Satisfaction of all Controverſies, and that the Defendant *non obtulit ſolvere, & hoc petit quod inquiratur, &c.* and the Defendant demurred; and it was held by two Judges, that the Plaintiff having alledged new Matters, ought to have concluded to the Country, by which Means the Defendant is deprived of his Opportunity of traverſing it; but the other two held, that the Defendant having admitted the Award good, and taken upon himſelf to plead Performance, he ſhall not be admitted to traverſe the new Matter, ſo as to make the Award void; but if in Truth the Money was not awarded in Satisfaction of all Controverſies, he ſhould at firſt have pleaded *Nullum fecerunt Arbitrium*; for if he ſhould now be admitted to prove it no Award, it would be a Departure. 3 *Lev.* 164.

8. If in Debt upon an Obligation, conditioned to perform an Award, the Defendant pleads no Award, and the Plaintiff replies, and ſets forth an

Award, made and tendered, &c pursuant to the Condition, and the Defendant rejoins, and alledges that the Award was not tendered *modo & Forma Prout*, and concludes *hoc Paratus est verificare*; this Rejoinder is naught on a double Account. First, Because it is a Departure from his Plea in Bar, for in his Plea he denies that any Award was made, and now he implicitly acknowledges it, but pretends that it was not made according to the Condition. 2dly, As his Plea is a direct Negative, he should have concluded to the Country, and not have traversed; for by this Means the Matter can never be put in Issue to be tried. 2 *Saund.* 190.

9. So in Debt on an Obligation to stand to an Award, and the Defendant pleads no Award, and the Plaintiff replies, and shews an Award and a Breach; to which the Defendant rejoins, that a new Cause of Action arose after the Submission and before the Award, and they awarded mutual Releases to be made at the Time of the Award made, and nothing further is awarded on one Side but the Release, and so the Award was void; on which the Plaintiff demurred, and it was adjudged for him, for the Rejoinder is a Departure; for when he pleads no Award, it shall be intended no Award at all; and then to shew and confess an Award in Fact, but saying that it is void in Law, is a Departure. Between *House* and *Launder*, 1 *Lev.* 85. The same Point was afterwards adjudged between *Morgan* and *Man*, 1 *Lev.* 127. and likewise between *Garret* and *Weeden*, 1 *Lev.* 133.

SECT.

SECT. V.

Of Demurrer, either to the Declaration, Plea, Replication, &c.

1. A Demurrer may be upon a Declaration, Replication, Rejoinder, *&c.* as well as on a Plea; for all the Parts of pleading to Iſſue, ought to be according to the Rules of Law, or elſe the Party may demur thereto; for though by the Statute 4 *&* 5 *Ann.* for Amendment of the Law, Want of Form is not ſufficient upon a general Demurrer; yet when ſuch Want of Form is made a Cauſe of the Demurrer, it may prevail; and if there be Want of Subſtance, a general Demurrer will ſuffice.

2. The ſafeſt Way for the Defendant in moſt Caſes, if he imagines that the Award was not made according to Law, is to demur to the Plaintiff's Declaration, if he ſets forth the Award therein, or to his Replication; for when the Submiſſion is by Bond, he cannot plead *nihil Debet* to it; neither can plead *non ſubmiſit*, though he may plead *non eſt factum*, or that the Arbitrators made no Award; which laſt is the uſual Plea, and then it is incumbent on the Plaintiff to ſet forth the Award in his Replication; to which the Defendant may demur either generally or ſpecially; in which Caſe the Court will give Judgment for him, if the Award be not made according to Law and the Terms of the Submiſſion; and this will prevent any Danger of having his Rejoinder conſtrued a Departure.

And the ſame Rules, relating to general and ſpecial Demurrers, will be applied to awards as well as to other Caſes.

3. As

3. As if in Debt upon an Obligation, conditioned for the Performance of an Award, ſo as, *&c.* the Defendant pleads no Award, and the Plaintiff replies, that *ante exhibitionem Billæ, ſcilicet*, the 24th of *June*, which was a Day within the Submiſſion, the Arbitrators made an Award, *viz. &c.* and the Defendant demurs generally, the Plaintiff ſhall have Judgment; for though the Plaintiff ought to have replied, that the Arbitrators made their Award before the Day limited to them; yet this is Form only, and helped by a general Demurrer. 2 *Sid.* 370.

4. In Debt upon an Obligation, conditioned to perform an Award, the Defendant pleads no Award, and the Plaintiff replies an Award, that the Defendant ſhould pay to the Plaintiff 15 *l.* at or before the firſt of *December* next following, and aſſigns a Breach that the Defendant did not pay the 15 *l.* upon the ſaid firſt of *December*; whereunto the Defendant demurs generally, and Judgment was for him; for although he did not pay it upon the ſaid firſt of *December*, he might have paid it before the ſaid firſt of *December*; and although Payment before the Day is a good Payment at the Day, where Payment at the Day is pleaded, yet in Pleading the Parties ought to purſue the Words of the Condition. 1 *Lev.* 293. It would be needleſs to ſet down all Cauſes of Demurrer, which in Effect would be but ſhewing for what Cauſes Awards have been held void; which ſee *Chap.* VI.

SECT.

SECT. VI.

Precedents of Pleadings in Awards.

J. S. of, &c. complains of *W. N.* being in the Custody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, of a Plea that he render to him one hundred Pounds of lawful Money of *England*, which he owes to and unjuſtly detains from him; for that, to wit, that whereas the ſaid *W. N.* on the 19th Day of *Auguſt* in the Thirteenth Year, &c. at, &c. by his certain Writing obligatory, ſealed with the Seal of the ſaid *W. N.* and now ſhewn to the Court of our ſaid Lord the King here, the Date whereof is the ſame Day and Year aboveſaid, acknowledged himſelf to be held and firmly bound to the ſaid *J. S.* in the ſaid Sum of one hundred Pounds, to be paid to the ſaid *J. S.* when he ſhould be thereunto afterwards required; but yet the ſaid *W. N. the ſaid Sum of one hundred Pounds, or any Part thereof, to the ſaid* J. S. (*although often required*) hath not yet paid, but to pay him the ſame hath hitherto abſolutely refuſed, and ſtill refuſeth, to the Damage of the ſaid *J. S.* ten Pounds, and therefore he bringeth Suit, &c. Pledges to proſecute, *John Doe* and *Richard Roe*.

Declaration upon an Arbitration Bond.

Not in the Original.

And now here at this Day, to wit, *Monday* next after eight Days of St. *Hilary* this ſame Term, until which Day the ſaid *W. N.* had Leave to imparl, and then to anſwer before our Lord the King at *Weſtminſter*, comes as well the ſaid *J. S.* by his Attorney aforeſaid, as the ſaid *W. N.* by *T. B.* his Attorney, and the ſaid *W. N.* defends the Force and Injury, when, &c. and prays Oyer of the Writing obligatory

Plea.

obligatory aforeſaid; and it is read to him, *&c.* he likewiſe prays Oyer of the Condition of the ſaid writing; and it is read to him in theſe Words, (to wit) The Condition of this Obligation is ſuch, That if the above-bounden *W. N.* his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalfs, do and ſhall, in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *John Hind*, of the, *&c.* and *John Cooper*, of the ſaid, *&c.* Arbitrators indifferently named, elected and choſen, as well on the Part and Behalf of the above-bounden *W. N.* as of the above-named *J. S.* to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time or Times heretofore had, made, moved, brought, conſented, proſecuted, done, ſuffered, committed or depending by and between the ſaid Parties, or either of them, ſo as the ſaid Award be made in Writing, and ready to be delivered to either of the ſaid Parties requiring the ſame, on or before the eighth Hour in the Afternoon of this preſent Day; but if the ſaid Arbitrators do not make ſuch their Award, of and concerning the Premiſſes, by the Time aforeſaid; that then if the ſaid *W. N.* his Executors and Adminiſtrators, for his and their Parts and Behalf, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, Umpirage, final End and Determination of *P. C.* Gent. of and concerning the Premiſſes, ſo as the ſaid Umpire do make his Award or Umpirage of and concerning the Premiſſes in Writing, and ready to be delivered to either of the ſaid Parties requiring the ſame, on or before the eighth Hour

Hour in the Afternoon of the Day next enſuing the Date of theſe Preſents; then this Obligation to be void, or elſe to remain in full Force, Strength and Virtue. Which being read and heard, the ſaid *W. N.* ſaith, That the ſaid *J. S.* ought no tto have or maintain his aforeſaid Action thereof againſt him, becauſe he ſaith that the ſaid *John Hind* and *John Cooper* in the ſaid Condition named made no Award, Order, Arbitrament, final End or Determination, before the eighth Hour in the Afternoon of the ſaid 19th Day of *Auguſt* in the Year aforeſaid, being the Date of the ſaid Writing obligatory. But the ſaid *W. N.* further ſaith, that the ſaid *P. C.* the Umpire in the ſame Condition likewiſe named, having taken upon himſelf the Burthen of making an Award, of and concerning the Premiſſes in the ſaid Condition above ſpecified, afterwards, and before the eighth Hour in the Afternoon of the Day next enſuing the Date of the ſaid Writing obligatory in the ſame Condition ſpecified, to wit, at the eighth Hour in the Forenoon of the ſame Day, at, *&c.* made his Umpirage in Writing, of and concerning the ſaid Premiſſes, then and there ready to be delivered to the Parties aforeſaid in Manner and Form following, *&c.*

London, ſſ. JOHN EYRE of *Sheffield* Manor in the County of *York*, Gent. otherwiſe called *Johannes Eyre de Sheffield Maner' in Com' Eborum Gen'*, was ſummoned to anſwer *Burrowes Trippet*, Gent. of a Plea that he render to him three hundred Pounds of lawful Money of *Great Britain*, which he owes to, and unjuſtly detains from him, *&c.* And whereupon the ſaid *Burrowes* by *Richard Milward* his Attorney complains, that whereas the ſaid *John* on the 9th Day of *March* in the Year of our Lord 1739 at *London*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, by his certain Wri-

Debt on Bond to perform an Award.

ting obligatory acknowledged himſelf to be held and firmly bound to the ſaid *Burrowes* in the ſaid three hundred Pounds, to be paid to the ſaid *Burrowes* when he ſhould be thereunto afterwards required: Nevertheleſs the ſaid *John* (although often required) the ſaid three hundred Pounds to the ſaid *Burrowes* hath not yet rendered, but to render him the ſame hath hitherto refuſed, and ſtill refuſeth; wherefore he ſaith he is prejudiced and hath Damage to the Value of one hundred Pounds; and therefore he brings Suit, *&c.* And the ſaid *Burrowes* brings here into Court the Writing aforeſaid, which teſtifies the Debt aforeſaid in Form aforeſaid, the Date whereof is the Day and Year above mentioned, *&c.*

Plea. Defendant craves Oyer of the Bond.

And the ſaid *John* by *John Gatacre* his Attorney comes and defends the Force and Injury, when, *&c.* and craves Oyer of the Writing aforeſaid; and it is read to him, *&c.* he likewiſe craves Oyer of the Condition of the ſaid Writing; and it is read to him in theſe Words, (to wit) The Condition of this Obligation is ſuch, That if the above bounden *John Eyre* his Executors and Adminiſtrators, for his and their Parts and Behalfs, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *Francis Barlow* of *Sheffield* in the ſaid County, Gent. and *Robert Soreſby* of *Sheffield* aforeſaid, Gent. Arbitrators indifferently named, elected and choſen, as well on the Part and Behalf of the above bounden *John Eyre*, as of the above named *Burrowes Trippet*, to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and

and Demands whatſoever, at any Time or Times heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by or between the ſaid Parties, or either of them, ſo as the ſaid Award be made and put in Writing, or by Word of Mouth, on or before the Ninth Day of *April* now next enſuing; but if the ſaid Arbitrators do not make ſuch their Award, of and concerning the Premiſſes, by the Time aforeſaid, that then if the ſaid *John Eyre*, his Executors and Adminiſtrators, for his and their Parts and Behalfs, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, Umpirage, final End and Determination of ſuch Umpire, as the ſaid *Francis Barlow* and *Robert Soreſby* ſhall nominate, between the ſaid Parties, of and concerning the Premiſſes, ſo as the ſaid Umpire do make his Award or Umpirage, of and concerning the Premiſſes, by Writing or Word of Mouth, on or before the Sixteenth Day of *April* aforeſaid, then this Obligation to be void, or elſe to remain in full Force, Strength and Virtue. Which being read and heard, the ſaid *John Eyre* ſaith, that the ſaid *Burrowes Trippet* ought not to have his ſaid Action againſt him by Virtue of the Writing obligatory aforeſaid produced here in Court, becauſe he ſaith that the ſaid *Francis Barlow* and *Robert Soreſby* in the ſaid Condition above mentioned, after the making of the ſaid Writing obligatory as produced here in Court, and within the Time aforeſaid in the ſaid Condition in that Behalf limited, made no Award, Order, Arbitrament, final End or Determination in Writing, or by Word of Mouth, of and concerning the Premiſſes in the ſaid Condition above mentioned, between the ſaid *Burrowes Trippet* and the ſaid *John Eyre*: And the ſaid *John Eyre* further ſaith, that the ſaid *Francis Barlow* and

Defendant pleads that neither the Arbitrators nor Umpire made any Award or Umpirage.

Robert Soresby, after the making of the said Writing obligatory produced here in Court, and within the Time in the said Condition in that Behalf limited, to wit, on the Tenth Day of *April* in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, nominated one *Francis Jessop*, Esq; to be Umpire between the said *Burrowes Trippet* and the said *John Eyre*, of and concerning the Premisses aforesaid, and that the said *Francis Jessop* so nominated Umpire as aforesaid within the Time by the Condition aforesaid in that Behalf to him limited, made no Award, Umpirage or Determination, of and concerning the Premisses aforesaid by Writing, or by Word of Mouth; and this he is ready to certify; wherefore he prays Judgment whether the said *Burrowes Trippet* ought to have his said Action by Virtue of the said Writing obligatory thereof against him, *&c.*

For Plaintiff replies.

And the said *Burrowes* saith, that he ought not by any Thing before alledged to be precluded from

ſaith, that the ſaid *Francis Jeſſop* then and there abſolutely refuſed to be Umpire between the ſame *Burrowes* and the ſaid *John*, of and concerning the Premiſſes; and thereupon the ſaid *Francis Barlow* and *Robert Soreſby* afterwards, then and there, to wit, on the ſaid Tenth Day of *April* in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, nominated one *Cornelius Clark*, Eſq; to be Umpire between the ſaid *Burrowes* and the ſaid *John*, of and concerning the ſaid Premiſſes; and the ſaid *Burrowes* further ſaith, that the ſaid *Cornelius* afterwards, and before the ſaid Sixteenth Day of *April* in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, having taken upon himſelf the Burthen of the ſaid Umpirage, by Word of Mouth did award and order, that the ſaid *John* ſhould pay to the ſaid *Burrowes* Seventy Pounds upon the Nineteenth Day of *May* then next enſuing, at the Houſe of *John Elliſon* in *Sheffield* in the County of *York*, between Twelve and Three of the Clock in the Afternoon of the ſame Day, and that upon Payment upon the

ting obligatory acknowledged himſelf to be held and firmly bound to the ſaid *Burrowes* in the ſaid three hundred Pounds, to be paid to the ſaid *Burrowes* when he ſhould be thereunto afterwards required: Nevertheleſs the ſaid *John* (although often required) the ſaid three hundred Pounds to the ſaid *Burrowes* hath not yet rendered, but to render him the ſame hath hitherto refuſed, and ſtill refuſeth; wherefore he ſaith he is prejudiced and hath Damage to the Value of one hundred Pounds; and therefore he brings Suit, *&c.* And the ſaid *Burrowes* brings here into Court the Writing aforeſaid, which teſtifies the Debt aforeſaid in Form aforeſaid, the Date whereof is the Day and Year above mentioned, *&c.*

Plea. Defendant craves Oyer of the Bond.

And the ſaid *John* by *John Gatacre* his Attorney comes and defends the Force and Injury, when, *&c.* and craves Oyer of the Writing aforeſaid; and it is read to him, *&c.* he likewiſe craves Oyer of the Condition of the ſaid Writing; and it is read to him in theſe Words, (to wit) The Condition of this Obligation is ſuch, That if the above bounden *John Eyre* his Executors and Adminiſtrators, for his and their Parts and Behalfs, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *Francis Barlow* of *Sheffield* in the ſaid County, Gent. and *Robert Soreſby* of *Sheffield* aforeſaid, Gent. Arbitrators indifferently named, elected and choſen, as well on the Part and Behalf of the above bounden *John Eyre*, as of the above named *Burrowes Trippet*, to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and

and Demands whatſoever, at any Time or Times heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by or between the ſaid Parties, or either of them, ſo as the ſaid Award be made and put in Writing, or by Word of Mouth, on or before the Ninth Day of *April* now next enſuing; but if the ſaid Arbitrators do not make ſuch their Award, of and concerning the Premiſſes, by the Time aforeſaid, that then if the ſaid *John Eyre*, his Executors and Adminiſtrators, for his and their Parts and Behalfs, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, Umpirage, final End and Determination of ſuch Umpire, as the ſaid *Francis Barlow* and *Robert Soreſby* ſhall nominate, between the ſaid Parties, of and concerning the Premiſſes, ſo as the ſaid Umpire do make his Award or Umpirage, of and concerning the Premiſſes, by Writing or Word of Mouth, on or before the Sixteenth Day of *April* aforeſaid, then this Obligation to be void, or elſe to remain in full Force, Strength and Virtue. Which being read and heard, the ſaid *John Eyre* ſaith, that the ſaid *Burrowes Trippet* ought not to have his ſaid Action againſt him by Virtue of the Writing obligatory aforeſaid produced here in Court, becauſe he ſaith that the ſaid *Francis Barlow* and *Robert Soreſby* in the ſaid Condition above mentioned, after the making of the ſaid Writing obligatory as produced here in Court, and within the Time aforeſaid in the ſaid Condition in that Behalf limited, made no Award, Order, Arbitrament, final End or Determination in Writing, or by Word of Mouth, of and concerning the Premiſſes in the ſaid Condition above mentioned, between the ſaid *Burrowes Trippet* and the ſaid *John Eyre*: And the ſaid *John Eyre* further ſaith, that the ſaid *Francis Barlow* and

Defendant pleads that neither the Arbitrators nor Umpire made any Award or Umpirage.

Robert Soresby, after the making of the said Writing obligatory produced here in Court, and within the Time in the said Condition in that Behalf limited, to wit, on the Tenth Day of *April* in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, nominated one *Francis Jessop*, Esq; to be Umpire between the said *Burrowes Trippet* and the said *John Eyre*, of and concerning the Premisses aforesaid, and that the said *Francis Jessop* so nominated Umpire as aforesaid within the Time by the Condition aforesaid in that Behalf to him limited, made no Award, Umpirage or Determination, of and concerning the Premisses aforesaid by Writing, or by Word of Mouth; and this he is ready to certify; wherefore he prays Judgment whether the said *Burrowes Trippet* ought to have his said Action by Virtue of the said Writing obligatory thereof against him, *&c.*

The Plaintiff replies.

And the said *Burrowes* saith, that he ought not by any Thing before alledged to be precluded from having his said Action against the said *John*, because he saith that well and true it is, that the said *Francis* and *Robert* in the said Condition above named, after the making of the said Writing obligatory, and within the Time aforesaid in the said Condition in that Behalf limited, did make no Award, Order, Arbitrament, final End or Determination in Writing, or by Word of Mouth, of and concerning the Premisses in the said Condition above mentioned, between the said *Burrowes* and the said *John Eyre*, and that the said *Francis Barlow* and *Robert Soresby* before the Sixteenth Day of *April* in the said Condition mentioned, to wit, on the Day and at the Place in the Plea aforesaid mentioned, did nominate the said *Francis Jessop*, Esq; to be Umpire between the said *Burrowes* and the said *John*: But the said *Burrowes* further saith,

ſaith, that the ſaid *Francis Jeſſop* then and there abſolutely refuſed to be Umpire between the ſame *Burrowes* and the ſaid *John*, of and concerning the Premiſſes; and thereupon the ſaid *Francis Barlow* and *Robert Soreſby* afterwards, then and there, to wit, on the ſaid Tenth Day of *April* in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, nominated one *Cornelius Clark*, Eſq; to be Umpire between the ſaid *Burrowes* and the ſaid *John*, of and concerning the ſaid Premiſſes; and the ſaid *Burrowes* further ſaith, that the ſaid *Cornelius* afterwards, and before the ſaid Sixteenth Day of *April* in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, having taken upon himſelf the Burthen of the ſaid Umpirage, by Word of Mouth did award and order, that the ſaid *John* ſhould pay to the ſaid *Burrowes* Seventy Pounds upon the Nineteenth Day of *May* then next enſuing, at the Houſe of *John Elliſon* in *Sheffield* in the County of *York*, between Twelve and Three of the Clock in the Afternoon of the ſame Day, and that after ſuch Payment upon the ſame Day, and at the ſame Place the ſaid *Burrowes* and *John Eyre*, Eſq; ſhould mutually ſeal to each other General Releaſes; but yet the ſaid *John Eyre*, although often required, hath not paid to the ſaid *Burrowes* the ſaid Seventy Pounds according to the Form and Effect of the ſaid Umpirage; and this he is ready to certify; wherefore he prays Judgment, and that his Debt and Damages may be adjudged to him, *&c.*

The Defendant's Special Demurrer.

And the ſaid *John* ſaith, that the aforeſaid Plea of the ſaid *Burrowes* above pleaded in Reply, and the Matter therein contained, are inſufficient in Law for the ſaid *Burrowes* to have and maintain his ſaid Action againſt him the ſaid *John*, and that he is under no Neceſſity, nor is he obliged by the

Law of the Land, to give any Anſwer to the ſaid Plea in Manner and Form as the ſame is above pleaded; and this he is ready to certify; wherefore for want of a ſufficient Replication of the ſaid *Burrowes* in this Behalf, the ſaid *John* prays Judgment, and that the ſaid *Burrowes* be precluded from having his ſaid Action againſt him, *&c.* And for Cauſes of Demurrer in Law of him the ſaid *John* in this Behalf, the ſaid *John* according to the Form of the Statute in ſuch Caſe lately made and provided, ſhews and demonſtrates to the Court here theſe Cauſes following, to wit, That it does not appear by the ſaid Replication that the ſaid *John* had Notice that the ſaid Arbitrators had named the ſaid *Cornelius Clarke* to be an Umpire between the Parties aforeſaid, or that the ſaid *Cornelius* had any Authority to make any Umpirage, or to be Umpire between the ſame Parties of the Premiſſes aforeſaid, *&c.*

Plaintiff's Joinder in Demurrer.

And the ſaid *Burrowes*, for that he hath alledged ſufficient Matter above in Reply to maintain his ſaid Action, which ſaid Matter the ſaid *John* hath not denied, nor in any wiſe anſwered the ſame, but to admit the ſaid Verification altogether refuſes, he the ſaid *Burrowes* prays Judgment, and that his ſaid Debt, together with his Damages on Account of the detaining of ſuch Debt, be adjudged to him, *&c.* And becauſe the Juſtices here are willing to adviſe of and concerning the Premiſſes before they give Judgment thereupon, a Day is given to the Parties aforeſaid until three Weeks from the Day of St. *Michael* to hear their Judgment thereon, for that the Juſtices here are not yet adviſed, *&c.*

London

London, ſſ. BE it remembred that heretofore, to wit, in *Eaſter* Term laſt paſt before our Lord the King at *Weſtminſter* came *J. H.* by *C. B.* his Attorney, and brought here into the Court of our Lord the King then and there a certain Bill of his againſt *R. H.* in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt, and there are Pledges of proſecuting, to wit, *John Roe* and *Richard Roe*, which ſaid Bill follows in theſe Words, to wit, *London* to wit, *J. H.* complains of *R. H.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, of a Plea that he render to him Fifteen Pounds of lawful Money of *England*, which he owes to and unjuſtly detains from him; for that to wit, that whereas certain Suits and Differences were had and moved between him the ſaid *J.* and the ſaid *R.* touching and concerning certain Sums of Money due to the ſaid *J.* by the ſaid *R.* for Braſs by him the ſaid *J.* to the ſaid *R.* before that Time ſold and delivered. *And whereas* for the appeaſing ſuch Suits and Differences, as well the ſaid *J.* as the ſaid *R.* on the twenty-fourth Day of *October* in the fourteenth Year of the Reign of our Sovereign Lord *George* the Second, King, *&c.* at *London* aforeſaid, to wit, in the Pariſh of St. *Dunſtan* in the Eaſt, in the Ward of *Farrington* without, ſubmitted and put themſelves to the Award, Order, Determination and Judgment of one *T. W.* Box-maker, and *R. L.* Citizen and Stationer of *London*, Arbitrators indifferently elected, as well on the Behalf of the ſaid *J.* as on the Behalf of the ſaid *R.* to award, order, determine and adjudge of and concerning all Actions, Suits, Quarrels, Controverſies, Treſpaſſes, Variances, Claims and Demands whatſoever then depending and being be- *Debt on Award.*

tween the ſaid Parties from the Beginning of the World until the ſaid twenty-fourth Day of *October* in the Year aforeſaid, ſo that the ſaid Arbitrators made and declared their Award touching the Premiſſes in Writing under their Hands and Seals, ready to be delivered to the ſaid *J.* and the ſaid *R.* on or before the ſeventh Day of *November* then next following; and if the ſaid Arbitrators ſhould not agree upon their ſaid Award at and by the Time aforeſaid, then as well the ſaid *R.* as the ſaid *J.* on the ſaid twenty-fourth Day of *October* in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, would put themſelves under the Award and Umpirage of ſuch Perſon as the ſaid Arbitrators ſhould nominate and elect to finiſh and determine the Premiſſes, ſo that the Umpirage and Award of ſuch Umpire ſhould be made in Writing under his Hand and Seal before the twentieth Day of the ſaid Month of *November*. *And whereas* the ſaid Arbitrators at any Time after the ſaid tweny-fourth Day of *October* in the Year aboveſaid, and at or before the ſaid ſeventh Day of *November* then next following, did not agree, make or declare any Award touching the Premiſſes aforeſaid in Writing under their Hands and Seals ready to be delivered to the ſaid *J.* and *R.* according to the Submiſſion aforeſaid; but the ſaid Arbitrators afterwards, to wit, on the ſeventh Day of *November* in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, one *Richard Weekes* of the Pariſh of St. *Giles* without *Cripplegate* in the County of *Middleſex*, Brewer, an Umpire, to finiſh and determine the Premiſſes aforeſaid, nominated and elected; which ſaid *Richard Weekes* afterwards, and before the twentieth Day of *November* in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, having taken upon himſelf the Burthen of the ſaid Umpirage

and

and Award, made his certain Umpirage of and concerning the Premiſſes, under the Hand and Seal of the ſaid *Richard Weekes*, and by his ſaid Umpirage awarded and ordered that the ſaid *R. H.* ſhould pay or cauſe to be paid to the ſaid *J. H.* the Sum of Fifteen Pounds of lawful Money, within fourteen Days then next following, in full of all Dues, Accounts and Sums of Money due to the ſaid *J.* whereby an Action accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid Fifteen Pounds; but yet the ſaid *R.* although often required, *&c.* the ſaid Fifteen Pounds hath not paid, but to pay the ſame hath hitherto denied, and ſtill denies, to the Damage of the ſaid *J.* Twenty Pounds; and therefore he brings Suit, *&c.*

And now here at this Day, to wit, *Friday* next after three Weeks of St. *Michael* this ſame Term, until which Day the ſaid *R. H.* had Leave to imparl to the Bill aforeſaid, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter*, comes as well the ſaid *J.* by his Attorney aforeſaid, as the ſaid *R.* by *J. H.* his Attorney, and the ſaid *R.* defends the Force and Inquiry, when, *&c.* and ſaith that the ſaid *J. H.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith that the ſaid Bill of the ſaid *J.* was exhibited on the Eighth Day of *April* in the Year, *&c.* and not before, and that the Cauſe of Action on which the ſaid *J.* hath declared againſt the ſaid *R.* did not accrew within ſix Years next before the Day of exhibiting the ſaid Bill; and this he is ready to verify; wherefore he prays Judgment whether the ſaid *J.* ought to have or maintain his ſaid Action thereof againſt him, *&c.* *Plea.*

And the ſaid *J. H.* ſaith, that he ought not, by any Thing alledged by the ſaid *R.* above in his Plea, *Demurrer.*

Plea, to be precluded from having his ſaid Action thereof againſt him, becauſe he ſaith that the ſaid Plea by him the ſaid *R.* in Manner and Form above pleaded, *&c.* and the Matter therein contained are not ſufficient in Law to preclude the ſaid *J.* from having his ſaid Action againſt the ſaid *R.* to which ſaid Plea the ſaid *J.* is under no Neceſſity, nor is be bound by the Law of the Land in any wiſe to anſwer; wherefore for want of a ſufficient Plea in this Behalf the ſaid *J.* prays Judgment, and his ſaid Debt, together with his Damages on Account of the detaining of ſuch Debt, to be adjudged to him, *&c.*

Joinder in Demurrer.

And the ſaid *R.* ſaith, that the ſaid Plea by him the ſaid *R.* in Manner and Form aforeſaid above pleaded, and the Matter therein contained, are good and ſufficient in Law to preclude the ſaid *J.* from having his ſaid Action thereof againſt him the ſaid *R.* which ſaid Plea and the Matter he the ſaid *R.* is ready to verify and prove as the Court, *&c.* and becauſe the ſaid *J.* hath not anſwered the ſaid Plea, nor in any wiſe denied the ſame, the ſaid *R.* as before prays Judgment, and that the ſaid *J.* be precluded from having his ſaid Action thereof againſt him, *&c.* but becauſe the Court of our ſaid Lord the King here is not yet adviſed, *&c.* at which Day before our ſaid Lord the King at *Weſtminſter* come the Parties aforeſaid by their Attornies aforeſaid; whereupon all and ſingular the Premiſſes being ſeen by the Court of our ſaid Lord the King, and fully underſtood, and mature Deliberation thereof had, for that it appears to the Court of our ſaid Lord the King here, that the Plea of the ſaid *R.* in Manner and Form above

Judgment.

pleaded, is not ſufficient in the Law to preclude the ſaid *J.* from having his ſaid Action againſt the ſaid *R.* it is conſidered that the ſaid *J.* do recover againſt

againſt the ſaid *R.* his ſaid Debt, and alſo ten Pounds for his Damages, which he ſuſtained as well on Account of the detaining of ſuch Debt, as for his Coſts and Charges by him about his Suit in this Behalf laid out, to the ſaid *J.* by the Court of our ſaid Lord the King here from his own Aſſent adjudged; and that the ſaid *R.* be in Mercy, *&c.*

Suff. ſſ. BE it remembred that heretofore, to wit, in the Term of St. *Michael* laſt paſt, before our Lord the King at *Weſtminſter* came *T. C.* by *E N.* his Attorney, and brought here into the Court of our ſaid Lord the King then and there a certain Bill of his againſt *W. H.* Gent. in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt; and there are Pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, to wit, *Suff.* to wit, *T. C.* complains of *W. H.* Gent. being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, of a Plea that he render to him nine Pounds of lawful Money, *&c.* which he owes to him and unjuſtly detains, for that to wit, that whereas on the twelfth Day of *September* in the Year, *&c.* certain Suits and Controverſies were moved, had and depending between them the ſaid *T.* and *W.* for the appeaſing and determining of which ſaid Suits and Controverſies the ſaid *T.* and *W.* on the twelfth Day of *September* in the Year aforeſaid, at *Halleſworth* in the County aforeſaid, ſubmitted themſelves to ſtand to the Award, Order and Judgment of one *W.* and *E.* Arbitrators between them indifferently elected, ſo that the ſaid Award ſhould be made by the ſaid Arbitrators, touching and concerning the Premiſſes, before the laſt Day of *Michaelmas* Term then next following, if they could; and if they could not, then

Debt upon an Award, in which the Award is ſet forth.

then to the Award and final Arbitration of one *Edward Cooke*, Eſq; the Umpire between the ſaid *T.* and *W.* indifferently elected, ſo that ſuch Award ſhould be made touching and concerning the Premiſſes before the laſt Day of *Michaelmas* Term aforeſaid; and the ſaid *T.* in fact ſaith, that the ſaid *W. C.* and *E. N.* made no Award, nor were they able to make any Award between the Parties aforeſaid touching and concerning the Premiſſes, before the laſt Day of *Michaelmas* Term, whereof the ſaid *Edward Cooke* having Notice, and having taken upon himſelf the Burthen of the ſaid Award, afterwards and before the ſaid laſt Day of *Michaelmas* Term aforeſaid, to wit, on the twenty-ſeventh Day of *November* in the Year, *&c.* at *Halleſworth* aforeſaid, it was awarded between the ſaid *T.* and *W.* of and concerning the Premiſſes in Form following, to wit, That the ſaid *W.* upon the twenty-fourth Day of *December* then next following ſhould pay to the ſaid *T.* nine Pounds, as well for Money due by the ſaid *W.* to the ſaid *T.* as for the Coſts and Charges of the ſaid *T.* in and about the Proſecution and Defence of the ſeveral Suits aforeſaid, and that upon Payment of the ſaid nine Pounds the ſaid *T.* and *W.* ſhould give to each other general Acquittances, whereby an Action accrued to the ſaid *T.* to demand and have of the ſaid *W.* the ſaid nine Pounds; but yet the ſaid *W.* (although often required, *&c.*) the ſaid nine Pounds to the ſaid *Thomas* hath not paid, but to pay him the ſame hath hitherto abſolutely refuſed, and ſtill refuſeth, to the Damage of the ſaid *Thomas* ten Pounds; and therefore he bringeth Suit, *&c.*

Demurrer. And now here at this Day, to wit, *Saturday* next after eight Days of St. *Hilary* this ſame Term, until which Day the ſaid *W.* had Leave to imparl to the ſaid Bill, and then to anſwer, *&c.* before our

our Lord the King at *Weſtminſter*, comes as well the ſaid *T.* by his Attorney aforeſaid, as the ſaid *W.* by *W. C.* his Attorney, and the ſaid *W.* defends the Force and Inquiry, when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith that the Declaration and the Matter therein contained are not ſufficient in Law for the ſaid *T.* to have or maintain the ſaid Action of the ſaid *T.* againſt him the ſaid *W.* to which ſaid Declaration he the ſaid *W.* has no Neceſſity, nor is he obliged by the Law of the Land in any wiſe to anſwer; and this he is ready to verify: wherefore for want of a ſufficient Declaration in this Behalf, he the ſaid *W.* prays Judgment, and that the ſaid *T.* be precluded from having his ſaid Action againſt him the ſaid *W. &c.*

And the ſaid *T.* ſaith that he ought not, by any Thing above alledged by the ſaid *W.* in his Plea, to be precluded from having his ſaid Action againſt him, becauſe he ſaith that the Declaration aforeſaid and the Matter therein contained are good and ſufficient in Law for him the ſaid *T.* to have and maintain his ſaid Action againſt the ſaid *W.* which ſaid Declaration, and the Matter therein contained, he the ſaid *T.* is ready to verify and prove as the Court, *&c.* and becauſe the ſaid *W.* hath not anſwered the ſaid Declaration, nor hath hitherto in any wiſe denied the ſame, prays Judgment and his Debt aforeſaid, together with his Damages, on Account of the detaining of ſuch Debt, to be adjudged to him, *&c.* but becauſe the Court of our ſaid Lord the King is not yet adviſed to give Judgment of and upon the Premiſſes, *&c.* *Joinder.*

London,

Debt upon a Bond of Submiſſion.

London, ſſ. BE it remembred, that heretofore to wit, in the Term of St. *Hilary* laſt paſt, before our Lord the King at *Weſtminſter* came *M. R.* Widow, by *T. S.* her Attorney, and brought here into the Court of our ſaid Lord the King then and there a certain Bill of her's againſt *T. M.* of *Aſcatt* in the County of *Glouceſter*, Eſq; in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt; and there are Pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, to wit, *London* to wit, *M. R.* Widow, complains of *T. M.* Eſq; being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, of a Plea that he render to her two hundred Pounds of lawful Money of *England*, which he owes to and unjuſtly detains from her, for that to wit, that whereas the ſaid *T.* on the twenty-fifth Day of *January* in the Year of our Lord, *&c.* at *London*, to wit, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, by his certain Writing obligatory, ſealed with the Seal of the ſaid *T.* and now ſhewn to the Court of our ſaid Lord the King, the Date whereof is the Day and Year aboveſaid, acknowledged himſelf to be held and firmly bound to the ſaid *M.* in the ſaid two hundred Pounds, to be paid to the ſaid *M.* when he ſhould be thereunto required; but yet the ſaid *T.* (although often requeſted) hath not yet paid the ſaid two hundred Pounds to the ſaid *M.* but to pay the ſame hath hitherto refuſed, and ſtill refuſeth, to the Damage of the ſaid *M.* twenty Pounds, and therefore ſhe bringeth Suit, *&c.*

Plea.

And now at this Day, to wit, *Friday* next after the Morrow of the Holy *Trinity* this ſame Term, till which Day the ſaid *T. M.* had Leave to imparl

to

to the ſaid Bill, and then to anſwer, &c. before our Lord the King at *Weſtminſter* comes as well the ſaid *M.* by her Attorney aforeſaid, as the ſaid *T. M.* by *J. S.* his Attorney, and the ſaid *T. M.* defends the Force and Inquiry, when, &c. and prays Oyer of the ſaid Writing obligatory; and it is read to him, &c. he likewiſe prays Oyer of the Condition of the ſaid Writing obligatory; and it is read to him in theſe Words, to wit, The Condition of this Obligation is ſuch, That if the above bounden *T. M.* his Heirs, Executors, Adminiſtrators and Aſſigns, and every of them, for his and their Part and Behalf, ſhall and do in all Things ſtand to, abide, obſerve, perform, fulfil and keep the Award, Determination, final End and Judgment of *H. K.* and *C. G.* Prebendaries of *Weſtminſter*, and Doctors of Divinity, Arbitrators indifferently nominated, elected and choſen, as well on the Part and Behalf of the above named *M. R.* to award, arbitrate, judge of, and determine of, for and upon, and concerning all and all Manner of Cauſes of Actions, Suit, Trouble, Debts, Reckonings, Accounts, Sums of Money, Claims and Demands whatſoever, had, made, ſtirred, moved or depending between the ſaid Parties, at any Time before the Date of the above written, ſo always as that the ſaid Award, Judgment and Determination of the ſaid Arbitrators, of, for and concerning the Premiſſes, be made and put in Writing indented, under their Hands and Seals, on this Side, and before the firſt of *May* now next enſuing, and one Part thereof delivered, or tendered to be delivered to the ſaid *T. M.* at or within the now Hall of the Dean and Chapter of *Weſtminſter* aforeſaid, ſituate in *Weſtminſter* aforeſaid, between the Hours of Two and Five in the Afternoon of the ſame Day; then this Obligation to be void, or elſe to be and ſtand in

full

full Force and Virtue; which being read and heard, the ſaid *T.* ſaith that the ſaid *M.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith that the ſaid *H. K.* and *C. G.* the Arbitrators in the ſaid Condition above mentioned, did not make any Award between the ſaid *T.* and *M.* in the ſaid Condition named, according to the Form and Effect of the ſaid Condition; and this he is ready to verify; wherefore he prays Judgment whether the ſaid *M.* ought to have or maintain her ſaid Action againſt him, *&c.*

Replication. And the ſaid *M. R.* ſaith, that ſhe by any Thing by the ſaid *T. M.* above in his Plea alledged ought not to be precluded from having her ſaid Action againſt him, becauſe ſhe ſaith that the ſaid *H. K.* and *C. G.* the Arbitrators in the ſaid Condition named, after the making of the ſaid Writing obligatory, and before the firſt Day of *May* in the ſaid Condition likewiſe mentioned, to wit, on the firſt Day of *February* in the Year of our Lord, *&c.* at *London* aforeſaid, in the Pariſh and Ward aforeſaid, having taken upon themſelves the Burthen of awarding, ordering and adjudging of and upon the Premiſſes in the ſaid Condition above ſpecified, between the ſaid *M. R.* and the ſaid *T. M.* and then and there made a certain Award in Writing indented under their Hands and Seals, touching and concerning the Premiſſes in the ſaid Condition above ſpecified, and by the ſaid Award then and there awarded and ordered in Manner and Form following, (that is to ſay) That the ſaid *T. M.* his Executors or Adminiſtrators, ſhould pay to the ſaid *M. R.* her Executors or Adminiſtrators, the Sum of one hundred Pounds of lawful Money of *Great Britain*, upon the tenth Day of *June* then next following, at or in the common Dining-Hall of the *Middle Temple*, *London*, between the Hours

of Two and Five in the Afternoon of the ſame Day; and as ſoon as the ſaid *T. M.* his Executors or Adminiſtrators ſhould have paid the ſaid Sum of one hundred Pounds to the ſaid *M.* her Executors or Adminiſtrators as aforeſaid, that ſhe the ſaid *M.* her Executors or Adminiſtrators, by her or their ſufficient Deed in Writing, ſhould remiſe and releaſe to the ſaid *T. M.* his Heirs, Executors or Adminiſtrators, all and all Manner of Actions, Cauſes and Cauſe of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time before the ſaid 25th Day of *January* then laſt paſt, before making of the ſaid Award, had, made, moved, brought, commenced, ſued, proſecuted, committed or depending between the ſaid *M. R.* and the ſaid *T. M.* and upon the ſealing and executing ſuch Releaſe by the ſaid *M. R.* her Executors or Adminiſtrators, to the ſaid *T. M.* his Heirs, Executors or Adminiſtrators as aforeſaid, he the ſaid *T. M.* his Executors or Adminiſtrators, by his or their ſufficient Deed in Writing, ſhould remiſe and releaſe to the ſaid *M.* her Heirs, Executors or Adminiſtrators, all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time had, made, moved, brought, commenced, ſued, proſecuted, committed or depending by or between the ſaid Parties, or either of them, before the ſaid twenty-fifth Day of *January* then laſt paſt before the making of the ſaid Award; and the ſaid *M. R.* further ſaith, that the ſaid Award ſo indented in Writing under the Hands and Seals of the ſaid Arbitrators, afterwards, to wit, for the whole Time, between Two and Five of the Clock in the Afternoon of

the ſaid firſt Day of *February*, in the ſaid Dining-Hall of the Dean and Chapter of *Weſtminſter*, ſituated at *Weſtminſter* in the County of *Middleſex*, was ready and tendred to be delivered to the ſaid *T. M.* but neither he nor any other Perſon on his Behalf came there to receive the ſaid Award; and the ſaid *M.* further ſaith, that the ſaid Award ſo indented in Writing under the Hands and Seals of the ſaid Arbitrators, during the whole Time, between the Hours of Two and Five in the Afternoon of the ſaid firſt Day of *May*, in the ſaid Condition above ſpecified, in the ſaid Dining-Hall of the Dean and Chapter of *Weſtminſter* aforeſaid, was in like Manner ready and tendred to be delivered to the ſaid *T. M.* but neither he nor any Perſon on his Behalf came to receive the ſame; and the ſaid *M.* further ſaith, that although ſhe the ſaid *M.* from the Time of the making of the ſaid Award hitherto hath performed, fulfilled and kept all and ſingular the Things in the ſaid Award contained on her Part to be performed, fulfilled and kept, according to the Form and Effect of the ſaid written Award, proteſting that the ſaid *T.* hath not performed or kept any Thing in the ſaid Award above ſpecified on his Part to be performed, fulfilled and kept, the ſaid *M.* ſaith that the ſaid *T.* before or upon the ſaid tenth Day of *June*, in the ſaid Award ſpecified, hath not paid to the ſaid *M.* the ſaid one hundred Pounds according to the Form and Effect of the ſaid Award; and this he is ready to verify; wherefore ſhe prays Judgment and her ſaid Debt, together with her Damages on Account of the detaining of ſuch Debt to be adjudged to her, *&c.*

Rejoinder. And the ſaid *T. M.* ſaith that the ſaid Award ſo indented in Writing under the Hands and Seals of the ſaid Arbitrators, during the whole Time aforeſaid,

ſaid, between the Hours of Two and Five in the Afternoon of the ſaid firſt Day of *February*, in the ſaid Dining-Hall of the Dean and Chapter of *Weſtminſter*, ſituated at *Weſtminſter* in the ſaid County of *Middleſex*, was not ready or tendered to to be delivered to the ſaid *T. M.* and that the ſaid Award ſo indented in Writing under the Hands and Seals of the ſaid Arbitrators, during the whole Time aforeſaid, between the Hours of Two and Five in the Afternoon of the ſaid firſt Day of *May* in the ſaid Condition above ſpecified, in the ſaid Dining-Hall of the ſaid Dean and Chapter of *Weſtminſter* aforeſaid, was not ready nor tendered to be delivered to the ſaid *T.* as the ſaid *M.* hath above in Reply alledged; and this he is ready to verify; wherefore as before he prays Judgment, and that the ſaid *M.* be precluded from having his ſaid Action thereof againſt him, *&c.*

Demurrer.

And the ſaid *M.* ſaith, that ſhe by any Thing by the ſaid *T.* in his Rejoinder above alledged ought not to be precluded from having her ſaid Action thereof againſt him, becauſe ſhe ſaith that the ſaid Plea of the ſaid *T.* in Manner and Form above pleaded in rejoining, and the Matter therein contained, are not ſufficient in Law to preclude the ſaid *M.* from having her ſaid Action againſt the ſaid *T.* to which ſaid Plea ſhe the ſaid *M.* is under no Neceſſity, nor is ſhe obliged by the Law of the Land in any wiſe to anſwer; and this ſhe is ready to verify; wherefore, for want of a ſufficient Rejoinder in this Behalf, the ſaid *M.* prays Judgment and her Debt aforeſaid, together with her Damages on Account of the detaining of ſuch Debt, to be adjudged to her, *&c.*

Joinder in Demurrer.

And the ſaid *T.* ſaith, that the aforeſaid Plea by him the ſaid *T.* in Manner and Form above plead-

ed in Rejoinder, and the Matter therein contained, are good and ſufficient in the Law to preclude the ſaid *M.* from having her ſaid Action againſt him the ſaid *T.* which ſaid Plea and the Matter therein contained the ſaid *T.* is ready to verify and prove as the Court, *&c.* And becauſe the ſaid *M.* to the ſaid Plea hath not anſwered, nor hath hitherto in any wiſe denied the ſame, as before, prays Judgment, and that the ſaid *M.* be precluded from having her ſaid Action againſt him; but becauſe the Court of our ſaid Lord the King here is not yet adviſed about giving their Judgment of and upon the Premiſſes, therefore a Day is given to the ſaid Parties before our Lord the King at *Weſtminſter*, until *Monday* next after three Weeks of St. *Michael*, to hear their Judgment of and concerning the Premiſſes; at which Day before our Lord the King at *Weſtminſter* come the Parties aforeſaid by their Attornies aforeſaid; whereupon all and ſingular the Premiſſes being ſeen, and by the Court of our ſaid Lord the King here fully underſtood, and mature Deliberation had thereupon, for that it appears to the Court of our ſaid Lord the King here, that the Plea aforeſaid by the ſaid *T.* in Manner and Form aforeſaid above pleaded in Rejoinder, and the Matter therein contained, are not ſufficient in Law to preclude her the ſaid *M.* from having her ſaid Action againſt him, It is conſidered that the ſaid *M.* do recover againſt the ſaid *T.* her Debt aforeſaid, and alſo ten Pounds for her Damages which ſhe hath ſuſtained, as well on Account of detaining of ſuch Debt, as for her Coſts and Charges by her about her Suit in this Behalf laid out, to the ſaid *M.* by the Court of our ſaid Lord the King from her own Aſſent adjudged, and the ſaid *T.* is in Mercy, *&c.*

London,

London, ſſ. BE it remembred, that on *Wedneſday* next after fifteen Days of *Eaſter* this ſame Term, before our Lord the King at *Weſtminſter* came *T. V.* Eſq; by *D. S.* his Attorney, and brought here into the Court of our ſaid Lord the King, then and there a certain Bill of his againſt *W. W.* of, *&c.* in the County of *Glouceſter*, Gent. being in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt; and there are Pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, to wit, *London*, to wit, *T. V.* Eſq; complains of *W. W.* otherwiſe called *W. W.* of, *&c.* in the County of *Glouceſter*, Gent. being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, of a Plea that he render to him two thouſand Pounds of lawful Money of *Great Britain*, which he owes to and unjuſtly detains, for that, to wit, that whereas the ſaid *W.* on the ſixteenth Day of *April* in the Year, *&c.* at *London*, to wit, in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, by his certain Writing obligatory ſealed with the Seal of the ſaid *W.* and now ſhewn to the Court of our ſaid Lord the King, the Date whereof is the ſame Day and Year, acknowledged himſelf to be held and firmly bound to the ſaid *T. V.* in the ſaid two thouſand Pounds, to be paid to the ſaid *T.* when he ſhould be thereunto afterwards requeſted; but yet the ſaid *W.* although often requeſted, the ſaid two thouſand Pounds to the ſaid *T.* hath not paid, but to pay the ſame hath hitherto abſolutely refuſed, and ſtill refuſeth, to the Damage of the ſaid *T.* one hundred Pounds; and therefore he brings Suit, *&c.*

Debt on a Bond of Submiſſion.

Plea and Performance pleaded.

And the *W. W.* by *W. S.* his Attorney, comes and defends the Force and Injury, when, *&c.* and prays Oyer of the ſaid Writing obligatory; and it is read to him, *&c.* he likewiſe prays Oyer of the Condition of the ſaid Writing, *&c.* and it is read to him in theſe Words, to wit, The Condition of this Obligation is ſuch, That if the above bounden *W. W.* and *J. D.* their Heirs, Executors and Adminiſtrators, for their Parts and Behalfs, ſhall and do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *J. C.* Gent. and *J. E.* Gent. Arbitrators indifferently elected and named, as well on the Part and Behalf of the above bounden *W. W.* as of the above named *T. V.* to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed or depending, by or between the ſaid Parties, or any of them, ſo as the ſaid Award be made by the ſaid Arbitrators, by the thirteenth Day of *May* next enſuing the Date hereof; and in Caſe the ſaid Arbitrators do not end the Differences between the ſaid Parties, then all Things ſhall be referred to Sir *B. T.* Knight and Baronet, as Umpire; who is to make his Umpirage in Writing the twentieth Day of *May* next enſuing; then this Obligation to be void and of none Effect, or elſe to remain in full Force and Virtue: Which being read and heard, the ſaid *W.* ſaith that the ſaid *T. V.* ought not to have his ſaid Action againſt him, becauſe he ſaith that the ſaid *J. C.* and *J. E.* the Arbitrators in the ſaid Condition

dition named, afterwards, to wit, the eleventh Day of *May* in the Year, &c. at *London* aforeſaid, in the Pariſh and Ward aforeſaid, made their Award in Writing, touching and concerning the Premiſſes aforeſaid in the ſaid Condition above ſpecified, and by the ſaid Award the ſaid *J. C.* and *J. E.* awarded that on *Wedneſday* the thirteenth Day of *May* then inſtant, the ſaid *W. W.* his Heirs, Executors and Adminiſtrators, ſhould ſatisfy, content and pay to the ſaid *T. V.* his Executors or Aſſigns, the full Sum of three thouſand one hundred and ſixty-nine Pounds ſixteen Shillings and Three-pence of lawful Money of *Great Britain*; and they further awarded that he the ſaid *W. W.* his Executors or Adminiſtrators, upon the thirteenth Day of *May* ſhould ſeal, and as his Deed deliver to the ſaid *T. V.* his Heirs, Executors and Adminiſtrators, a full and general Releaſe and Diſcharge of all and all Manner of Actions and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time before the Date of the ſaid Obligation here in Court produced, had, made, moved, commenced, ſued, proſecuted, committed or depending by or between the ſaid Parties; and the ſaid *W.* further ſaith, that he the ſaid *W.* on the ſaid tenth Day of *May* in the Year, &c. at *London* aforeſaid, in the Pariſh and Ward aforeſaid, paid to the ſaid *T. V.* the ſaid Sum of three thouſand one hundred and ſixty-nine Pounds ſixteen Shillings and Three-pence, according to the Form and Effect of the ſaid Award, and alſo then and there ſealed, and as his Deed delivered to the ſaid *T. V.* a full Releaſe of all and all Manner of Actions and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes and Demands; and this he is ready to verify; wherefore he prays

Judgment, whether the ſaid *T.* ought to have or maintain his ſaid Action againſt him, *&c.*

Debt upon the Bond.

Yorkſh. ſſ. S. *L.* late of, *&c.* in the County aforeſaid, Yeoman, otherwiſe called, *&c.* was ſummoned to anſwer *J. H.* Widow, of a Plea that he render to her one hundred Pounds which he owes to and unjuſtly detains from her, *&c.* and whereupon the ſaid *J.* by *T. B.* her Attorney complains, that whereas the ſaid *S.* on the twenty-fifth Day of *July* in the Year, *&c.* at *W.* by his certain Writing obligatory acknowledged himſelf to be held and firmly bound to the ſaid *J.* in the ſaid one hundred Pouuds, to be paid to the ſaid *J.* when he ſhould be thereunto required; but yet the ſaid *S.* although often requeſted, the ſaid one hundred Pounds to the ſaid *J.* hath not rendred, but to render him the ſame hath hitherto abſolutely refuſed, and ſtill refuſeth; wherefore ſhe ſaith ſhe is prejudiced and hath Damage to the Value of ten Pounds, and therefore ſhe bringeth Suit, *&c.* and ſhe brings here into Court the ſaid Writing, which teſtifies the ſaid Debt in Form aforeſaid, the Date whereof is the Day and Year aforeſaid, *&c.*

Plea.

And the ſaid *S.* by *J. E.* his Attorney, comes and defends the Force and Injury, when, *&c.* and prays Oyer of the ſaid Writing; and it is read to him, *&c.* he likewiſe prays Oyer of the Condition of the ſaid Writing; and it is read to him in theſe Words. The Condition of this Obligation is ſuch, That if the above bounden *S. L.* his Heirs, Executors and Adminiſtrators, for their Parts and Behalfs, ſhall and do in all Things, well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final end and Determination of *E. D.* of, *&c.* in the County of *York*, Clerk,

Clerk, and *R. R.* of, *&c.* in the ſaid County, Gent. Arbitrators indifferently elected and named, as well on the Part and Behalf of the above named *S. L.* as of the above named *J. H.* to arbitrate, award, order, judge and determine, of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed or depending by or between the ſaid Parties, or either of them, ſo as the ſaid Award be made either in Writing or by Word of Mouth, and ready to be delivered to the Parties in Difference, or ſuch of them as ſhall deſire the ſame, on or before Seven of the Clock in the Afternoon of this preſent Day; then this Obligation to be void, or elſe to remain in full Force and Virtue. Which being read and heard, the ſaid *S.* ſaith that the ſaid *J.* ought not to have her ſaid Action againſt him, becauſe he ſaith that the Arbitrators aforeſaid, after the making of the ſaid Writing, and before Seven of the Clock in the Afternoon of the ſaid twenty-fifth Day of *July* in the Year, *&c.* made no Award between the ſaid *S.* and the ſaid *J.* touching and concerning the Premiſſes in the ſaid Condition ſpecified; and this he is ready to verify; wherefore he prays Judgment whether the ſaid *J.* ought to have his ſaid Action againſt him, *&c.*

Plaintiff ſets forth an Award made ore tenus.

And the ſaid *J.* ſaith, that ſhe by any Thing before alledged ought not to be precluded from having her ſaid Action, becauſe ſhe ſaith that long before the making of the ſaid Writing, to wit, in the Term of the Holy *Trinity* in the Year, *&c.* in his Majeſty's Court of the Bench here, to wit,

at

at *Weſtminſter* in the County of *Middleſex*, ſhe the ſaid *J.* impleaded the ſaid *S.* in a certain Plea of Treſpaſs upon the Caſe, for that the ſaid *S.* had ſpoken of the ſaid *J.* certain ſcandalous *Engliſh* Words, which at the Time of the making of the ſaid Writing was depending and undetermined, and that the ſaid Arbitrators having taken upon themſelves the Burthen of the ſaid Award immediately after the making of the ſaid Writing, to wit, on the ſaid twenty-fifth Day of *July* in the Year, *&c.* and before Seven of the Clock in the Afternoon of the ſame Day at *W.* aforeſaid, their Award touching and concerning the Premiſſes in the ſaid Condition above mentioned, by Word of Mouth, made and publiſhed, and to the ſaid Parties before the ſaid Hour there declared in Manner and Form following, (that is to ſay) That the ſaid *S.* ſhould pay to the ſaid *J.* twelve Guineas, and all ſuch Sums as the ſaid *J.* had laid out or expended in and about the Proſecution of the Plea aforeſaid, and that immediately after ſuch Payment [as well the ſaid *J.* as the ſaid *S.* ſhould give to each other in Writing a general Releaſe of all Actions, Cauſes of Actions and Demands whatſoever, until the Time of making the ſaid Writing between them depending; and the ſaid *J.* further ſaith, that at the Time of making the ſaid Writing obligatory and Award, ſhe the ſaid *J.* had laid out and expended in and about the Proſecution of the Plea aforeſaid, the Sum of eleven Pounds ſeven Shillings and Seven-pence, to wit, at *Weſtminſter* aforeſaid, whereof the ſaid *S.* afterwards, to wit, on the firſt Day of *Auguſt* in the Year, *&c.* at *W.* had Notice; and afterwards, to wit, on the twentieth Day of the ſame *Auguſt* at *W.* aforeſaid, the ſaid *J.* requeſted the ſaid *S.* to pay to the ſaid *J.* as well the ſaid twelve Guineas as the ſaid eleven Pounds ſeven Shillings and Seven

pence;

pence; but the ſaid *J.* in fact ſaith that the ſaid *S.* hath not paid to the ſaid *J.* the ſaid twelve Guineas according to the Form and Effect of the ſaid Award; and this ſhe is ready to verify; wherefore ſhe prays Judgment and her Debt aforeſaid, together with her Damages on Account of the detaining of ſuch Debt, to be adjudged to her, *&c.*

Demurrer to the Replication.

And the ſaid *S.* ſaith, that the aforeſaid Plea of the ſaid *J.* above pleaded in Reply, and the Matter therein contained, are not ſufficient in the Law for the ſaid *J.* to have and maintain her aforeſaid Action againſt him the ſaid *S.* and that he has no need, nor is he obliged by the Law of the Land to give any Anſwer to the ſaid Plea in Manner and Form above pleaded; and this he is ready to verify; wherefore for want of a ſufficient Replication in this Behalf, the ſaid *S.* as before prays Judgment, and that the ſaid *J.* may be barred from having her ſaid Action againſt him, *&c.*

Joinder in Demurrer.

And the ſaid *J.* for that ſhe has above in her Replication alledged ſufficient Matter in the Law to have and maintain her ſaid Action againſt the ſaid *S.* which ſhe is ready to verify, which ſaid Matter the ſaid *S.* doth not deny, nor in any wiſe anſwer thereto, but altogether refuſes to admit the Verification thereof, prays Judgment as before, and her Debt aforeſaid, together with her Damages on Account of the detaining that Debt to be adjudged to her, *&c.* And becauſe the Juſtices here are willing to adviſe themſelves of and concerning the Premiſſes before they give their Judgment thereon, a Day is given to the Parties aforeſaid here until from the Day of *Eaſter* in fifteen Days, to hear thereon their Judgment, *&c.*

W. H.

Debt upon a Bond.

W. H. late of, *&c.* was ſummoned to anſwer *R. S. R. D.* and *W. S.* of a Plea that he render to them forty Pounds, which he owes to and unjuſtly detains from them, and whereupon the ſaid *R. W. R. D.* and *W. S.* by *R. S.* their Attorney complain, that whereas the ſaid *W. H.* on the ſecond Day of *Auguſt* in the Year, *&c.* at *G.* by his certain Writing obligatory acknowledged himſelf to be bound to the ſaid *R. R.* and *W.* in the ſaid forty Pounds, to be paid to the ſaid *R. R.* and *W.* when he ſhould be thereunto required; but nevertheleſs the ſaid *W. H.* although often requeſted, the ſaid forty Pounds to the ſaid *R. R.* and *W.* hath not rendered, but to render them the ſame hath hitherto refuſed, and ſtill refuſeth; wherefore they ſay they are prejudiced and have Damage to the Value of twenty Pounds. And they bring here into Court the ſaid Writing, which teſtifies the ſaid Debt in Form aforeſaid, the Date whereof is the Day and Year above mentioned, *&c.*

Plea.

And the ſaid *W. H.* by *J. M.* his Attorney comes and defends the Force and Injury, when, *&c.* and prays Oyer of the Writing aforeſaid; and it is read to him, *&c.* he likewiſe prays Oyer of the Condition of the ſaid Writing; and it is read to him in theſe Words, to wit, The Condition of this Obligation is ſuch, That if the above bounden *W. H.* his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalfs, ſhall and do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *Ambroſe Pudſey*, of, *&c.* Eſq; and *Thomas Parker*, of, *&c.* Eſq; Arbitrators indifferently elected and named, as well on the Part and Behalf of the above bounden *W. H.* as of the above named *R. R.* and *W.* to arbitrate, award, order, judge and determine

of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed or depending by or between the ſaid Parties, ſo as the ſaid Award be made and put into Writing, and ready to be delivered to the ſaid Parties in Difference, or ſuch of them as ſhall deſire the ſame, on or before the eleventh Day of *November* next; then this Obligation to be void, or elſe to ſtand in full Force and Virtue. Which being read and heard, the ſaid *W. H.* ſaith that the ſaid *R. R.* and *W.* ought not to have their ſaid Action againſt him, becauſe he ſaith that the ſaid *A. P.* and *T. P.* the Arbitrators aforeſaid after the making of the ſaid Writing, at or before the ſaid eleventh Day of *November*, in the Condition of the ſaid Writing above mentioned, made no Award between the ſaid Parties in the ſaid Condition above ſpecified; and this he is ready to verify; wherefore he prays Judgment whether the ſaid *R. R.* and *W.* ought to have their ſaid Action againſt him, *&c.*

The Replication, ſetting forth the Award.

And the ſaid *R. R.* and *W.* ſay that they ought not, by any Thing by the ſaid *W. H.* above alledged in his Plea, to be precluded from having their ſaid Acton againſt him, becauſe they ſay that the ſaid *A. P.* and *T. P.* the Arbitrators in the ſaid Condition above named having taken upon themſelves the Burthen of making their Award between the ſaid Parties aforeſaid, of and upon the Premiſſes in the ſaid Condition above mentioned, after the making of the ſaid Writing, and before the ſaid eleventh Day of *November* in the Year, *&c.* at *G.* the ſaid Arbitrators made their Award in

in Writing under their Hands and Seals, touching and concerning the Premiſſes aforeſaid, then and there ready to be delivered to the ſaid Parties, by which Award the ſaid Arbitrators awarded and ordered touching and concerning the Premiſſes in the ſaid Condition above ſpecified, in Manner and Form following, (that is to ſay) That the ſaid *W. H.* ſhould well and truly pay or cauſe to be paid to them the ſaid *R. W. R. D.* and *W. S.* or to any of them, the Sum of fifteen Pounds of lawful Money, *&c.* on or before the firſt Day of *December* then next following, which the ſaid Arbitrators judged the ſaid *R. R.* and *W.* to have ſuſtained in Coſts and Damages, by Reaſon of a certain Suit proſecuted without any Cauſe by the ſaid *W. H.* againſt them the ſaid *R. R.* and *W.* and further the ſaid Arbitrators ordered that all Suits and Differences between the ſaid *W. H.* of the one Part, and the ſaid *R. R.* and *W.* of the other Part, which were moved, had or depending before the Day of the Date of the ſaid Writing obligatory, ſhould abſolutely ceaſe and be void and determined, as by the ſaid Award (among other Things) may more fully appear; and the ſaid *R. R.* and *W. S.* proteſting that the ſaid *W. H.* hath not obſerved, performed, fulfilled and kept any Thing in the ſaid Award above ſpecified on the Part of the ſaid *W. H.* to be obſerved, performed, fulfilled or kept, they the ſaid *R. R.* and *W.* in fact ſay that the ſaid *W. H.* hath not paid to the ſaid *R. R.* and *W.* or to any of them, the Sum of fifteen Pounds on the ſaid firſt Day of *December* then next following the Date of the ſaid Award, and which he ought to have paid to them or ſome of them, according to the Form and Effect of the ſaid Award; and this they are ready to verify; wherefore they pray Judgment and their Debt aforeſaid, together with

their

their Damages on Account of the detaining of ſuch Debt, to be adjudged to them, &c.

The Defendant's Demurrer.

And the ſaid *W. H.* ſaith that the aforeſaid Plea of the ſaid *R. R.* and *W.* above pleaded in Reply, and the Matter therein contained, are not ſufficient in the Law for the ſaid *R. R.* and *W.* to have and maintain their aforeſaid Action againſt him the ſaid *W. H.* and that he has no need, nor is he obliged by the Law of the Land to give any Anſwer to the ſaid Plea in Manner and Form above pleaded; and this he is ready to verify; wherefore for want of a ſufficient Replication in this Behalf, the ſaid *W. H.* as before prays Judgment, and that the ſaid *R. R.* and *W.* may be barred from having their ſaid Action againſt him, &c.

Joinder in Demurrer.

And the ſaid *R. R.* and *W.* for that they have above in their Replication alledged ſufficient Matter in the Law to have and maintain their ſaid Action againſt the ſaid *W. H.* which they are ready to verify; which ſaid Matter the ſaid *W. H.* doth not deny nor in any wiſe anſwer thereto, but altogether refuſes to admit the Verification thereof, pray Judgment as before, and their Debt aforeſaid, together with their Damages on Account of the detaining that Debt, to be adjudged to them, &c. And becauſe the Juſtices here are willing to adviſe themſelves of and concerning the Premiſſes before they give their Judgment thereon, a Day is given to the Parties aforeſaid here until from the Day of *Eaſter* in fifteen Days, to hear thereon their Judgment, &c.

Debt on Bond of Submiſſion.

London, ſſ. JOHN CROWE, late of, &c. in the County aforeſaid, &c. was ſummoned to anſwer *William Seal* of a Plea that he render

render to him forty Pounds, which he owes to and unjuſtly detains from him, &c. and whereupon the ſaid *William* by *John Harris* his Attorney complains, that whereas the ſaid *John Crowe* on the twenty-third Day of *January* in the Year, &c. at *B.* by his certain Writing obligatory acknowledged himſelf to be held to the ſaid *William* in the ſaid forty Pounds, to be paid to the ſaid *William* when he ſhould be thereunto requeſted; but yet the ſaid *John Crowe* (although often required) the ſaid forty Pounds to the ſaid *William* hath not rendered, but to render him the ſame hath hitherto refuſed, and ſtill refuſeth; wherefore he ſaith he is prejudiced and hath Damage to the Value of twenty Pounds, and therefore brings Suit, &c. and he brings here into Court the ſaid Writing, which teſtifies the ſaid Debt in Form aforeſaid, the Date whereof is the Day and Year above mentioned, &c.

Tender and Refuſal pleaded.

And the ſaid *John Crowe* by *William Bele* his Attorney comes and defends the Force and Injury, when, &c. and prays Oyer of the ſaid Writing; and it is read to him; he likewiſe prays Oyer of the Condition of the ſaid Writing; and it is read to him in theſe Words. The Condition of this Obligation is ſuch, That if the above bounden *John Crowe*, his Heirs and Executors, and every of them, for his and their Parts and Behalfs, ſhall and do in all Things well and truly ſtand to, abide, obſerve and perform, fulfil and keep the Award, Order, Rule, Judgment and final Determination of *O. B.* of, &c. and *T. H.* of, &c. Arbitrators indifferently elected and choſen, as well on the Part and Behalf of the above bounden *J. C.* as on the Part and Behalf of the above named *William Seal*, to arbitrate, award, order, judge and finally determine, of, in, and upon all and all Manner of

Action

Action and Actions, Cauſe and Cauſes of Action, Suits, Bonds, Bills, Quarrels, Variances, Treſpaſſes, Batteries, Dues, Debts, Reckonings, Accounts and Demands whatſoever, at any Time heretofore had, moved, committed and depending between the ſaid Parties, or either of them, ſo as the ſaid Arbitrators do make and declare their Award in the Premiſſes, on this Side, or before the tenth Day of *February* next enſuing the Date hereof; and if the ſaid Arbitrators cannot agree, nor no Award ſhall make in the Premiſſes, then if the above bounden *John Crowe*, his Heirs, Executors and Adminiſtrators, and every of them, do well and truly ſtand to, abide, perform, fulfil and keep the Award, Umpirage and final Determination of *William Smith*, of, *&c.* an Umpire indifferently elected and choſen by the mutual Conſent of both Parties, to arbitrate, award and finally determine, of, in, and upon all and all Manner of Actions, Suits, Bonds, Bills, Quarrels, Differences, Treſpaſſes, Batteries, Dues, Debts, Reckonings, Accounts and Demands whatſoever, at any Time heretofore had, moved, ſtirred or depending between the ſaid Parties, or either of them, ſo as the ſaid Umpire do make or declare his Award in the Premiſſes, on this Side or before the eighteenth Day of *February* next enſuing the Date hereof; that then this preſent Obligation to be void and of none Effect, or elſe to ſtand and abide in full Force and Virtue. Which being read and heard, the ſaid *John Crowe* ſaith that the ſaid *William Seal* ought not to have his ſaid Action againſt him, becauſe he ſaith that the ſaid Arbitrators in the ſaid Condition mentioned, after the making of the ſaid Writing obligatory, and upon or before the ſaid tenth Day of *February*, in the ſaid Condition above ſpecified, did not make any Award, Order,

Rule, Judgment or final Determination between the ſaid *John Crowe* and the ſaid *William Seal*, touching and concerning the Premiſſes in the ſaid Condition above ſpecified, according to the Form and Effect of the ſaid Condition; and the ſaid *John* further ſaith that the ſaid *William*, the Umpire in the ſaid Condition ſpecified, after the ſaid tenth Day of *February* in the ſaid Condition mentioned, and before the eighteenth Day of *February* therein alſo mentioned, to wit, the ſixteenth Day of *February* in the Year, *&c.* at *B.* aforeſaid, having taken upon himſelf the Burthen of the ſaid Umpirage then and there awarded, ordered and adjudged between the Parties aforeſaid, touching and concerning the Premiſſes in the aforeſaid Condition ſpecified, to wit, that he the ſaid *John Crowe*, his Executors, Adminiſtrators or Aſſigns ſhould pay to the ſaid *William Seal*, his Executors, Adminſtrators or Aſſigns, the Sum of twelve Pounds ten Shillings of good and lawful Money, *&c.* upon or before the thirteenth Day of *March* then next following; and the ſaid *John Crowe* in fact ſaith that he the ſaid *John* after the making of the ſaid Umpirage, to wit, on the ſaid thirteenth Day of *March* in the ſaid Umpirage mentioned, at *B.* aforeſaid, tendred to the ſaid *William Seal* the ſaid twelve Pounds ten Shillings, which the ſaid *William* to receive of the ſaid *John* then and there refuſed; and this he is ready to verify; wherefore he prays Judgment whether the ſaid *William Seal* ought to have his ſaid Action againſt him, *&c.*

Replication. And the ſaid *William* ſaith that he ought not, by any Thing before alledged by the ſaid *John Crowe*, to be precluded from having his ſaid Action againſt him the ſaid *John*, becauſe he ſaith that well and true it is, that the ſaid *William Smith* awarded,

awarded, ordered and adjudged that the ſaid *John Crowe*, his Executors, Adminiſtrators or Aſſigns ſhould pay to the ſaid *William Seal*, his Executors, Adminiſtrators or Aſſigns, the Sum of twelve Pounds ten Shillings of good and lawful Money, *&c.* upon or before the thirteenth Day of *March* then next following, in full Satisfaction of all Differences between the ſaid *William Seal* and the ſaid *John Crowe*; but the ſaid *William Seal* further ſaith that the ſaid *John Crowe* never tendered to the ſaid *William Seal* the ſaid twelve Pounds ten Shillings in Manner and Form as the ſaid *John Crowe* above in Reply hath alledged; and he prays that this may be inquired of by the Country, *&c.*

Demurrer.

And the ſaid *J.* ſaith that the aforeſaid Plea of the ſaid *W.* above pleaded in Reply, and the Matter therein contained, are not ſufficient in the Law for the ſaid *W.* to have and maintain his aforeſaid Action againſt him the ſaid *J.* and that he has no need, nor is he obliged by the Law of the Land to give any Anſwer to the ſaid Plea in Manner and Form above pleaded; and this he is ready to verify; wherefore for want of a ſufficient Replication in this Behalf, the ſaid *J.* as before prays Judgment, and that the ſaid *W.* may be barred from having his ſaid Action againſt him, *&c.*

Joinder in Demurrer.

And the ſaid *W.* for that he has above in his Replication alledged ſufficient Matter in the Law to have and maintain his ſaid Action againſt the ſaid *J.* which he is ready to verify; which ſaid Matter the ſaid *J.* doth not deny, nor in any wiſe anſwer thereto, but altogether refuſes to admit the Verification thereof, prays Judgment as before and his Debt aforeſaid, together with his Damages on Account of the detaining that Debt, to be adjudged

to him, *&c.* And becauſe the Juſtices here are willing to adviſe themſelves of and concerning the Premiſſes before they give their Judgment thereon, a Day is given to the Parties aforeſaid here until from the Day of *Eaſter* in fifteen Days, to hear thereon their Judgment, *&c.*

Aſſumpſit *on Award.*

Yorkſh. ſſ. BE it remembred, that heretofore, to wit, in *Eaſter* Term laſt paſt, before our Lord the King at *Weſtminſter* came *John Birks* by *Emanuel Scorah* his Attorney, and brought here into the Court of our Lord the King then and there a certain Bill of his againſt *Burrowes Trippet*, Gent. one of the Clerks of *R. H.* Knight, Chief Clerk of our Lord the King, aſſigned to inroll Pleas in the Court of our ſaid Lord the King, before the King himſelf, preſent here in Court in his own proper Perſon, of a Plea of Treſpaſs upon the Caſe; and there are Pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, to wit, *Yorkſhire*, to wit, *John Birks* complains of *Burrowes Trippet*, Gent. one of the Clerks of Sir *R. H.* Knight, Chief Clerk of our Lord the King, aſſigned to inroll Pleas in the Court of our ſaid Lord the King, before the King himelf, preſent here in Court in his own proper Perſon, for that, to wit, That whereas divers Quarrels, Differences and Suits were had and depending between him the ſaid *John* and the ſaid *Burrowes*, for the appeaſing of which Suits and Differences, and all other Cauſes of Action depending between them, as well the ſaid *John* as the ſaid *Burrowes*, on the fourteenth Day of *April* in the Year of our Lord, *&c.* at *Doncaſter* in the ſaid County, ſubmitted themſelves to ſtand to the Award, Order and final Judgment of one *Francis Barker*, the Arbitrator

indifferently elected between them, to award, order and finally adjudge of and concerning the Premiſſes. And the ſaid *Burrowes* afterwards, to wit, the ſame Day and Year aboveſaid, at *Doncaſter* aforeſaid in the County aforeſaid, in Conſideration of the ſaid Submiſſion, and in Conſideration that the ſaid *John* had then and there faithfully promiſed to pay to the ſaid *Burrowes* forty Pounds of lawful Money, *&c.* whenever he ſhould be by the ſaid *Burrowes* required thereunto; if the ſaid *John* ſhould not perform and fulfil all and every Thing which the ſaid Arbitrator ſhould award and adjudge touching and concerning the ſaid Premiſſes on his Part to be performed and fulfilled, took upon himſelf, and to the ſaid *John* then and there faithfully promiſed, that if he the ſaid *Burrowes* ſhould not perform and fulfil all and every Thing which the ſaid Arbitrator ſhould award and adjudge touching and concerning the ſaid Premiſſes on his Part to be performed and fulfilled, that then the ſaid *Burrowes* the ſaid forty Pounds of lawful Money, *&c.* to the ſaid *John* when he ſhould be thereunto required, would well and faithfully pay and content; and the ſaid *John* in fact ſaith that the ſaid Arbitrator having taken upon himſelf the Burthen of awarding, ordering and adjudging between him the ſaid *John* and the ſaid *Burrowes*, touching and concerning the Premiſſes in the ſaid Award ſo as aforeſaid mentioned, afterwards, to wit, on the twenty-firſt Day of the ſaid Month of *April* in the Year of our Lord, *&c.* at *Doncaſter* aforeſaid in the County aforeſaid, did thereupon award, order and adjudge in Manner and Form following, that is to ſay, In the firſt Place, that the ſaid *Burrowes* ſhould pay to the ſaid *John* the Sum of ten Shillings for and in Conſideration of the Damages of the ſaid *John* ſuſtained in a certain Action of

Treſpaſs and Aſſault, and alſo twenty Shillings more for the Care and depaſturing of a certain Mare of the ſaid *Burrowes*, by the ſaid *John* taken Care of and depaſtured; and the ſaid Arbitrator further awarded and adjudged that the ſaid *Burrowes* ſhould pay to the ſaid *John* for the Care of a certain Ox, and Medicines for two Heifers of the ſaid *Burrowes*, other ten Shillings; and alſo the further Sum of four Pounds towards the Coſts of the ſaid *John Birks* expended in Law upon divers Differences moved between them, which ſaid Sums in the whole amount to ſix Pounds, the ſaid Arbitrator awarded and adjudged the ſaid *Burrowes* to pay to the ſaid *John* upon the twenty-third Day of the ſaid Month of *April*, at the Dwelling-Houſe of *Henry Jenkinſon* in the Pariſh of *Hanſworth* in the County of *York*, and upon Receipt of the ſaid ſix Pounds general Releaſes under the Hands and Seals of each Party ſhould be mutually given to the other from the Beginning of the World until the ſaid twenty-third Day of *April* in the Year of our Lord, *&c.* and alſo that the ſaid *Burrowes* ſhould deliver to the ſaid *John* a certain Fine concerning and belonging to the ſaid *John Birks* and one *John Merriot*, late of the Pariſh of *Hanſbury* aforeſaid in the County aforeſaid; and the ſaid Arbitrator further awarded, ordered and adjudged for the appeaſing of the Differences aforeſaid, and for the Sake of Quiet, that the ſaid *John* from the Day of Date of the ſaid Releaſe ſhould ceaſe and deſiſt from all further Proſecution at the general Seſſion of the Peace againſt the ſaid *Burrowes*; and the ſaid *John* in fact ſaith, that although he the ſaid *John* well and truly performed and fulfilled all and every Thing in the ſaid Award above ſpecified on the Part of the ſaid *John* to be performed and fulfilled according to the Form and Effect of the ſaid A-

ward,

ward, yet the ſaid *Burrowes* the ſaid ſix Pounds to the ſaid *John Birks* on the ſaid twenty-third Day of *April* in the Year of our Lord, *&c.* at or in the ſaid Dwelling-Houſe of the ſaid *Henry Jenkinſon* hath not paid nor hath delivered the ſaid Fine according to the Form and Effect of the ſaid Award, although the ſaid *Burrowes* was required thereunto by the ſaid *John* afterwards, to wit, on the twenty-fourth Day of *April* in the Year of our Lord, *&c.* at *Doncaſter* aforeſaid in the County aforeſaid; but nevertheleſs the ſaid *Burrowes* his Promiſes and Undertakings aforeſaid, in Form aforeſaid made, in no wiſe regarding, but contriving and fraudulently intending the ſaid *John Birks* in this Behalf craftly and ſubtilely to deceive and defraud, the ſaid forty Pounds to the ſaid *John* according to his Promiſes and Undertaking hath not yet paid, although often requeſted, nor in any wiſe ſatisfied him for the ſame; wherefore the ſaid *John* ſaith that he is prejudiced, and hath Damage to the Value of one hundred Pounds; and therefore he bringeth Suit, *&c.*

The Defendant's ſpecial Plea.

And now here at this Day, to wit, *Tueſday* next after three Weeks of St. *Michael*, this ſame Term, until which Day the ſaid *Burrowes* had Leave to imparl to the ſaid Bill, and then to anſwer, *&c.* before our Lord the King, comes as well the ſaid *John* by his Attorney aforeſaid as the ſaid *Burrowes* in his proper Perſon, and the ſaid *Burrowes* defends the Force and Injury, when, *&c.* and ſaith that the ſaid *John Birks* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith that well and true it is, that he the ſaid *Burrowes* and the ſaid *John* did ſubmit themſelves to ſtand to the Award, Order and final Judgment of the ſaid *Francis Barker*, the Arbitrator between

them indifferently elected to award, order and finally adjudge touching and concerning the Premiſſes, and that he the ſaid *Burrowes* did thereupon undertake to perform and fulfil all and every Thing which the ſaid Arbitrator ſhould adjudge and award on the Part of the ſaid *Burrowes* to be performed and fulfilled as the ſaid *John* hath above in his Declaration alledged; but the ſaid *Burrowes* further ſaith, that after the ſaid Submiſſion, and alſo the ſaid Promiſe and Undertaking of the ſaid *Burrowes* made, and before the ſaid Arbitrator made any Award or final Judgment between him the ſaid *Barrowes* and the ſaid *John Birks*, to wit, on the twentieth Day of *April* in the Year, *&c.* at *Doncaſter* aforeſaid in the ſaid County of *York*, the ſaid *John* was indebted to the ſaid *Burrowes* in four Pounds of lawful Money as well for Fees by the ſaid *John* to the ſaid *Burrowes*, as the Attorney of the ſaid *John* before that Time due and then remaining unpaid, as for ſeveral Sums by the ſaid *Burrowes* for the ſaid *John*, at the Inſtance and Requeſt of the ſaid *John* before that Time laid out and expended, of which ſaid Debt of four Pounds to the ſaid *Burrowes* by the ſaid *John* ſo as aforeſaid due, the ſaid Arbitrator afterwards, to wit, the Day and Year laſt aboveſaid at *Doncaſter* aforeſaid had Notice, and the ſaid *Burrowes* then and there made it appear to the ſaid Arbitrator, that the ſaid four Pounds were juſtly due to the ſaid *Burrowes* and ought to be paid to the ſaid *John*, and then and there requeſted the ſaid Arbitrator to make an Allowance thereof to the ſaid *Burrowes* by the Award of him the ſaid Arbitrator, to be ended between him the ſaid *Burrowes* and the ſaid *John*; and the ſaid *Burrowes* further ſaith, that the ſaid Arbitrator afterwards, to wit, on the twientieth Day of *April* in the Year, *&c.* at *Doncaſter* aforeſaid,

ſaid, made his Award between him the ſaid *Burrowes* and the ſaid *John*, without any Allowance or Conſideration had to the ſaid *Burrowes* touching or concerning the ſaid Debt of four Pounds to the ſaid *Burrowes* by the ſaid *John* ſo as aforeſaid due and unpaid, notwithſtanding the ſaid Notice and Proof thereof to the ſaid Arbitrator by him the ſaid *Burrowes* ſo as aforeſaid given and made; and this the ſaid *Burrowes* is ready to verify; wherefore he prays Judgment whether the ſaid *John* ought to have or maintain his ſaid Action upon the ſaid Writing of Award, made in Manner and Form aforeſaid, againſt him the ſaid *Burrowes*, *&c.*

THE

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——— May conſider different Points at ſundry Times, but their Judgment muſt be one and not ſeveral. 69, 109

——— Cannot reſerve any Thing for future Judgment when the Time is expired. 69, 70, 102, 144, 145

——— When their Power extends to a Matter not ſubmitted to, ſuch Power is void, and the Award good. 70

——— In a Diverſity, where to do a Miniſterial and where a Judicial Act, the firſt is held good and the latter void. 70, 144

——— Cannot award Lands in Debate to be meaſured by others in their Preſence. 71

——— May award a Miniſterial Act to be done by a Stranger. 71

——— When they may make an Award of Parcel, and the Umpire the Reſidue. 74

——— Cannot award a Stranger to do any judicial Act. 102

——— *E fortiori* cannot award the Parties to ſtand to the Award of another. 102

——— May award the Parties to ſtand to the Arbitrament of a Stranger, if the ſame had been before made by him between the ſaid Parties. 102

——— To deliver their Award to all the Parties concerned. 122

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Arbitrators to make the Award within the Time limited by the Submiſſion. *Page* 213

Of the Award.

An Award muſt be made in Writing and delivered to the Parties or either of them by ſuch a Day, as the Words of the Submiſſion direct. 11, 31, 121, 122

——— Made generally upon Submiſſion, by Conſent or Bonds. 33

——— Directing one Party to do an Act depending upon another firſt to be done of the other Party, he muſt have Notice thereof. 11

——— Should be made beneficial to each Party and poſſible, lawful, certain and final. 11, 14, 112, 141, 146, 148, 152

——— To be expounded as intended by the Arbitrators, and not to be unravelled in Equity, unleſs by Corruption in the Arbitrators. 11

——— For one to pay the whole Money, two being jointly bound, is good. 12

——— For one to pay Money to the other's Servant, good. 12, 151

——— May be that one Party beg the other's Pardon before ſuch a Mayor, *&c.* 13

——— For Releaſes to be given to the Time of the Submiſſion moſt adviſeable. 13

——— Muſt be ſigned and ſealed by the Arbitrators, or their Marks ſet if they cannot write. 13, 120, 121

——— Is good tho' neither Submiſſion nor Award be in Writing. 18

The TABLE.

An Award upon Parol (Submiſſion being to pay the Party a certain Sum) an Action may be brought for the ſame. *Page* 18

——— May be made in an Appeal of *Mayhem*, *&c.* 18

——— May be made of Arrears of Rent reſerved in a Leaſe for Years. 18

——— May be to releaſe all Bonds, Judgments, Executions and Extents, *&c.* 19

——— Seldom inforced by the Judges when the Submiſſion or Award is by Parol. 20

——— Cannot be made of a Freehold. 21

——— Muſt not be of a Leaſe for Years. 21

——— For Expences laid for the other, good. 23

——— Made in the Party's Favour, unreaſonable in him to find Fault therewith. 24

——— Is to be made conformable to the Submiſſion with reſpect to Perſons and Things. 36

——— For any Thing to be done merely out of the Submiſſion, void. 37, 84

——— Of any Thing depending on the Ppincipal, valid. 37

——— That *A.* ſhall make a Leaſe to *B.* for which he ſhall pay to *A.* a certain Sum yearly, good. 38

——— When the Submiſſion is abſolute, the Award for ſuch Part thereof as ſettled is valid. 39

——— Upon a Submiſſion conditional, ſo as the ſame Award be reduced and delivered in Writing before the ſaid Day, is valid. 39

An

The TABLE.

An Award wherein for Part of the Premiſſes, void, *Page* 39

——— Upon a Submiſſion by Covenant, good. 42

——— Upon a Submiſſion ingaging for two Strangers, good. 55

——— *Ex parte*, and not to the Defendant himſelf, is void. 56

——— Wherein the Father and Son jointly ſubmit, nothing being awarded as to the Son, void. 57, 74, 93, 94

——— Should be made between the Parties chiefly intereſted in the Controverſy. 58

——— Upon Submiſſion of an Infant for Battery or Treſpaſs done to himſelf in his Land, invalid. 59

——— Upon the Submiſſion of an Infant, void. 59

——— Binding on the other Side, tho' not on the Infant. 59, 192, 194

——— Againſt two Perſons, tho' bound in ſeparate Bonds, held good. 60

——— Upon a Submiſſion taken diſtributively, valid. 61, 93

——— Where two Perſons are jointly concerned, the Money paid by one can be no Satisfaction for the other; adjudged *Niſi*. 61, 93

——— Where three Perſons, to wit, *A. B.* and *C.* are to make Satisfaction to *D.* and the Award is only made between *A.* and *B.* and not between *C.* and *D.* is void as to *A.* 61

——— Where Differences ariſe between ſeveral Parties on both Sides, and that the Award may be made between them or any of them, an Award

Award made between any one of the Parties on both Sides is held good. *Page* 62, 150, 151

——— May be made between ſeveral Perſons jointly or ſeparately, if they are all preſent, and the Arbitrators have Knowledge of the whole Fact. 62, 192

——— Made where the Party injured ſubmit with one of them (tho' divers are concerned) is an Extinguiſhment of the Treſpaſs on the Behalf of all of them. 62

——— Made upon the Submiſſion of the Predeceſſor *prior* is binding on the Succeſſor. 63

——— For a Perſon to pay a certain Sum, when binding on his Executors, *&c.* in Caſe of Death. 63

——— Made in the Disjunctive binding on Executors, *&c.* 63, 140

——— May be ſet aſide thro' Partiality or Unfairneſs. 66, 194

——— Wherein any one of the Arbitrators is intereſted, void. 66

——— Made for a Debt upon Bond, tho' in ſuch Award there be a Miſrecital of the Date of the ſaid Bond, good. 68

——— Directed to be made before the ſixth Day of *January* then next following, and tho' made upon the fifth between Eight and Nine in the Eve, held good. 68

——— Being not made final, void. 69, 70

——— For a Party to pay a Penalty; not paying a certain Sum on a Day certain, good. 70

——— For one to enjoy Lands for three Years, rendring to the other five Pounds yearly, good. 70

An

The TABLE.

An Award, that in Default of Payment thereof, as to the Enjoyment of the Lands, void. *Page* 70

——— For one to give a general Releaſe to the other on Payment of a certain Sum, good. 71

——— For one of the Parties to releaſe all Actions, *&c. ut talis adviſaret*, void. 71, 101

——— Made by the Arbitrators without the Concurrence of the Umpire choſen by both Parties, good. 75

——— Made upon Submiſſion to four, and to the Umpirage of *J. S.* ſuch Award made by them jointly, good. 75

——— Made where their Power is pivided in the Submiſſion, void. 75

——— Made by an Umpire, averring that the Arbitrators *non potuerunt*, *&c.* or the Death of one of them, or their Diſagreement, or that they would meddle no more, good, 76

——— Its ſeveral Incidents belonging thereto: 81

——— Ought regularly to be agreeable to the Submiſſion in Matter and Words, and to all Inſtances therein. 83, 86

——— If made agreeable thereto in Subſtance ſufficient. 84

——— Of Things not in Variance when the Submiſſion is of all Things in Variance betwixt the Parties, void. 84

——— Made concerning the Profits only of Land, upon a Submiſſion of the Right and Intereſt thereof, void. 84

The TABLE.

An Award made of the Manor of *S.* when Submiſſion is of the Manor of *D.* void. *Page* 84, 85

——— Of ſuch Things of which the Parties have only Cauſe of Action, if the Submiſſion be of all Actions, void. 85

——— Upon the Submiſſion of all Actions and Quarrels, good. 85

——— May be made of all Matters concerning the Title of Land upon a Submiſſion of all Demands. 85

——— For the Huſband to pay a certain Sum of Money (laid out for the Wife at her Requeſt being more than ſubmitted to) void. 85

——— Made for the Payment of Tithes to the Parſon, upon a Submiſſion of all Matters as well Spiritual as Temporal, good. 85

——— Cannot be made of Land for which an Action *in Ejectione firmæ* is brought. 86

——— For Payment of Rent upon Submiſſion only of a Term for Years, and all thereupon depending, void. 86

——— That one ſhall enjoy a certain Houſe, paying yearly a certain Rent, which if not paid is good, the Condition being broke. 86

——— For making a Leaſe and paying Rent for the ſame, good. 86

——— May be made upon Things depending on the Principal, tho' not expreſſed in the Submiſſion. 86, 87

——— May be made of the Evidences and Charters of Land, if the Title and Poſſeſſion thereof be ſubmitted to. 87

An Award may be for Releaſes of all Bonds, Judgments, &c. upon a Submiſſion of all Debts, as alſo of the Debts themſelves, good. *Page* 87

——— Held good by Conſtruction though not made agreeable to the Things ſubmitted to. 87

——— Made of all, *præter* one Obligation, and of this the Award is, it ſhall ſtand, is a good Award of the whole upon a Submiſſion of all Matters between the Parties. 87

——— That *A.* ſhall pay *B.* fifty Pounds and that all Manner of Actions, Quarrels, &c. between them ſhall ceaſe, though no Mention is made of Words, &c. according to the Submiſſion, good. 88

——— That a certain Sum be paid for all Arrears of Rent due for a Houſe and divers Elms, upon which the Difference aroſe, held good. 88, 89

——— Of a Thing not mentioned in the Submiſſion, how formerly it was held void. 89

——— For a Perſon to give his Horſe in Satisfaction, &c. (being contrary to the Submiſſion) void. 89

——— For one Obligee to deliver up an Obligation to the other in full Satisfaction of all Differences, held good, tho' not directed by the Submiſſion. 89, 90

——— That a Horſe or Money may be given in full Satisfaction, *quære.* 90

——— Whether it be of Money or a Collateral Thing, as a Hat or Horſe, held a good Plea. 90

The TABLE.

An Award upon a Submiſſion conditional when void. *Page* 92, 93

——— Upon a Submiſſion of three or more Parties may be made between any two of them, if the Submiſſion directs it. 92

——— Made between them or any of them on the like Submiſſion, though no Mention of the Wife, good. 94

——— Where *A.* and *B.* ſubmit, and the Award be made in the Name of *A.* on the Behalf of another, void. 95

——— Between *A.* and *B.* Merchants, of a Ship of the one Part, and *C. D.* Part-Owners thereof on the other Part, that *A.* and *B.* the Merchants ſhall pay one thouſand Pounds to *C.* and *D.* for their Uſe, and the Reſidue of the other Part-Owners and Mariners, good. 95

——— For one Partner, on the Behalf of himſelf and the other, to pay a certain Sum, held good. 95, 96

——— That one Perſon on the Behalf of two Strangers pay a certain Sum, having ingaged for them, good. 96

——— Where ſeveral Perſons enter into ſeparate Bonds of one thouſand Pounds a-piece, yet binding upon all of them to make a General Releaſe purſuant to the Award. 96

——— Muſt be made advantageous for the Perſon on whoſe Behalf the Submiſſion was made: 97

——— Upon the Submiſſion of *A.* for himſelf of the one Part, and *B.* of the other Part, on the Behalf of *C.* nothing being awarded on

on *C.*'s Behalf, the principal Perſon concerned, was void. *Page* 97

——— Made and appointing a Thing to be done by a Stranger, how far binding, and how otherwiſe in Law. 97

——— For one of the Parties to procure a Stranger to do a Thing not compellable by Law, void. 98

——— When compellable by the Common Law or Chancery, valid. 98

——— For one to pay fifteen Pounds to the other, and a Stranger ſhall enter into a Bond to pay it, void. 98

——— Between *A.* and *B.* that *A.* and his Wife and Son, by the Procurement of *A.* ſhall aſſure Land to *B.* this Award is void as to Wife and Son. 98

——— That one ſhall acquit the other of an Obligation of two hundred Pounds, in which they are bound to *B.* for Payment of one hundred and five Pounds, good. 98

——— Where Part thereof appointing any Thing to be done by a Stranger not compellable by Law to do is void, yet binding on himſelf. 99

——— For the Defendant, together with a Stranger, to enter into a Bond in the Aſſignment of a Breach, how reſolved by different Judges. 99

——— For one to be bound with Sureties is void as to the Sureties. 100

——— For the Defendant to be bound with Sureties in an *Aſſumpſit*, void as to finding the Sureties, yet binding on the Defendant. 100

An Award for Defendant to pay the Plaintiff thirty Pounds in Satisfaction, *&c.* out of the Eſtate of one *Wolley*, Judgment upon the *Aſſumpſit* was ſtaid. *Page* 100

——— For a Stranger to do a Miniſterial Act, valid; if a Judicial one, void. 100, 101

——— For one to be bound by the Advice of his Counſel to pay ten Pounds to the other, good. 101

——— For one Party paying ten Pounds to the other, ſuch Party to execute a General Releaſe as Counſel ſhall adviſe, good. 101

——— To pay twenty Pounds for a Horſe, if *J. S.* ſhall ſay 'tis worth ſo much, good. 101

——— For one of the Parties to leave ſo many Trees for Houſe-boot, *&c.* as the Arbitrators by Advice of Counſel at the next Aſſizes ſhall appoint, void. 101

——— To pay ſuch Coſts as a Prothonotory ſhall tax, good. 102

——— For a Perſon to ſurrender his Copyhold, *&c.* good. 102

——— For a Perſon to make a Deed of Feoffment, with a Letter of Attorney to make Livery, good. 102

——— To levy a Fine before the Juſtices *de Banco*, *&c.* good. 12, 102

——— To command the Juſtices *de Banco* to oblige any Perſon to levy a Fine, *&c.* void. 102

——— To pay a certain Sum of Money to a Stranger not mentioned therein, void. 104

An

An Award to assure Lands to a Man and his Wife who is a Stranger, not binding on the Party in respect to the Wife. *Page* 104

——— For the Servant of *A.* to pay Money to the Servant of *B.* void. *Quare.* 104

——— That *J.* shall pay one Moiety of the Money with the Use, and *W. N.* the other Moiety to the Obligee, though a Stranger, good. 104

——— For *A.* to pay Money to *B.* and his Wife, the Controversy arising between them, good. 105

——— To pay Money to one of the Parties, held an Advantage. 105

——— To make an Estate of certain Lands for Life of the Plaintiff, with Remainder to *J. S.* was held good as to the particular Estate, but void as to the Remainder. 105

——— To make an Acknowledgment of an Injury done to another before the Mayor of *T.* and three others, void. 105

——— To make such Acknowledgment before the Mayor of *T.* only, good. 105

——— For *A.* to pay *B.* fifty Pounds, and for *A.* to beg *B.*'s Pardon in such Manner and Place as *B.* should appoint, void. 105

——— May be made by two of the Arbitrators only though four are appointed, if the Submission runs to them or any two of them. 106, 107

——— May be made in like Manner by three of them without the rest. 107

An Award, if made on any Part of the Day or Night, whereon the Submiſſion bears Date, good. *Page* 109

——— Muſt not be made ſo as to prevent all the Parties from being preſent. 109

——— If made in the Night-time or at a private Meeting, and no Notice thereof proved to have been given to the Parties, not good. 109, 194

——— When made of Debts at one Day, of Treſpaſſes at another Day, and of other Things at another Day, void as to the two laſt. 109

——— To pay five Pounds for ten Loads of Wood, and ſeveral other Matters for other Things before *Michaelmas*, ſo much as is proved ſhall not be paid at the ſaid Feaſt. 110, 159

——— To pay nineteen Pounds and twelve Shillings before the firſt Day of *January*, after *ſi nullum ulterius Arbitrium fieret*, before the ſaid time, void. 110

——— Made *de et ſuper Præmiſſis* of all Matters to the 28th of *January*, though the Submiſſion was to the 29th of *January*, good. 111

——— In like Manner of all Controverſies to the firſt of *May*, though the Submiſſion to the fourth of *May*, good. 111

——— To releaſe a Title to a Copyhold, *&c. ſuper prædicto primo die Maii*, omitting the Word *viceſimo*, void. 111, 112

——— For Payment of a Sum of Money in like Manner, void. 132

——— Should mention the Time and Place when and where made. 112

The TABLE.

An Award, the Time thereof when made, or of the Submiſſion, need not be ſpecified in the Plaintiff's Declaration, *Niſi, &c.* *Page* 112

——— If pleaded in Bar of Treſpaſs, a Place muſt then be laid where the Submiſſion was made. 112

——— For General Releaſes to be given to the Time of the Award, good upon a double Account. 112

——— But if the ſame be made after the Submiſſion, void. 113, 114

——— Made, though comprehending more Time than ſubmitted to, when good, 114, 115

——— For a Horſe to be delivered to the Plaintiff in Controverſy, and for each Party to execute a General Releaſe to the other of all Matters, *&c.* betwixt St. *Bartholomew* and St. *Michael*, being contrary to the Time ſubmitted to, void. 115, 116

——— To execute General Releaſes till the Award, and to pay ten Pounds *præter* the Releaſe, being on a Day after the Submiſſion, void. 116

——— To releaſe all Actions till the Award which was made to the 27th of *January*, though the Time of the Submiſſion was to *February* following, good. 116

——— Upon a Submiſſion, *ita quod de Præmiſſis, &c.* for Payment of twenty Pounds two Months after the Award, and to execute General Releaſes to that Time, good. 117

——— To pay a Sum of Money at two ſeveral Days, and preſently to give one another mutual Releaſes, void. 117

The TABLE.

An Award to pay a certain Sum of Money at two ſeveral Days, and that mutual Releaſes ſhall be given, good. *Page* 117

——— Made upon the Premiſſes, and Releaſes to be given till the Award, if proved there were no other Matters in the mean Time, good. 117

——— If made *de et ſuper Præmiſſis*, and the Submiſſion is *ita quod fiat de Præmiſſis*, good. 118

——— General without any limited Time *de et ſuper Præmiſſis*, ſhall be intended to the Time of the Submiſſion, and Releaſes of all Demands till then ſhall be good. 118, 119

——— Of a General Releaſe of all Demands till the Time of the Award, good. 119

——— For *A.* to pay *B.* ten Pounds, and that *B.* ſhall pay to *A.* the Expences at the making of the Award, and on performing the whole to execute General Releaſes to each other, good. 120

——— For a Perſon to pay ſeven Pounds and ten Shillings, and alſo all the Expences of the Suit, *&c.* good as to the ſeven Pounds and ten Shillings, but void as to the Expences. 120

——— Parties not bound to take Conuſance of the Delivery thereof elſewhere than at the Place appointed. 123

——— Delivery thereof, (being to the Parties themſelves) tho' at another Day and Place than appointed, good. 123

——— If directed to be delivered to ſuch of the Parties who ſhall deſire it, ſuch Party may upon Refuſal plead, *&c.* 123

An

An Award by Parol for Payment of ten Pounds within ſix Months after the Date thereof, good. *Page* 124

——— By Parol the Party not tied to ſet forth the very Words, *&c.* 124

——— Parol capable of Delivery, ſo it is ready to be delivered from the Time it is agreed upon, good. 124

——— Though without Date good. 124

——— Generally requiſite for the Parties to attend the Delivery thereof from Sun-riſe to Sun-ſet. 125

——— Any Place appointed therein muſt be well known and acceſſable. 125, 126

——— The Time may be limited thereby for an Hour or two. 126

——— To pay Money at the Houſe of a Stranger, or at the Houſe of *J. S.* good. 126

——— To pay Money in the Houſe, or at the Houſe where the Owner thereof hath Lands adjoining, *&c. Quære.* 126

——— To pay Money at the Houſe of *J. S.* in *C.* being intended a common Inn, good. 127

——— To pay Money in or at the Houſe of *J. S.* in *Bury*, the Perſon may go to the Door of the Houſe without being a Treſpaſſer. 127

——— Perſonal Demand muſt be made of the Thing awarded before Attachment can iſſue, if Submiſſion is by Rule of Court. 127

——— A Tender and Refuſal of any Thing awarded hath the ſame effect as in other Caſes. 127

The TABLE.

An Award ſhall be a good Bar of an Action brought after tender and Refuſal. *Page* 127
——— Upon Tender and Refuſal of what is to be done by one Perſon, he is intituled to what was awarded on his Behalf. 128
——— For a certain Sum to be paid one of the Parties, and that both ſhall give Releaſes for the ſame, and he who is to receive the Money upon a Tender and Refuſal, is obliged to ſign a Releaſe as if he actually received it. 128
——— If uncertain, void. 129
——— For the one Perſon to enjoy the Land in Controverſy, and the other to enter into a Bond to him, but for no Sum, void. 129
——— To give Security for the Payment of ſixteen Pounds without ſhewing what Kind of Security, void. 130
——— To give Bond for the Payment of a certain Sum of Money without aſcertaining the ſame, void. 130
——— To give a Perſon two Shillings for Brakes growing on waſte Lands, without giving any Name to the Lands, void. 131
——— To pay ſo much Money for every Quarter of Malt, as one Quarter had been before ſold for, but not mentioning the Sum, void. 131
——— To pay the Arrears of Rent void for Uncertainty. 131, 132
——— To pay another ſo much as is due in Conſcience, void. 132
———To pay Quit-Rents and other ſmall Things, void. 132

An

An Award to pay for certain Task-work and Day-work, void. *Page* 132

——— To pay two hundred Pounds *aut eo circiter*, the Party being bound for one hundred Pounds *aut eo circiter*, good. 132

——— Upon an *Aſſumpſit de et ſuper Præmiſſis* for Defendant to pay Plaintiff thirty Pounds out of the Eſtate of *W.* void. 132, 133

——— To pay Part of the Charge of a Voyage, and to allow a proportionable Part of the Loſs that ſhall happen to the Ship by ſuch Voyage upon Account, good. 133

——— For the Parties to execute Releaſes to each other within four Days after the Award, which was upon the laſt Day of *April* according to the Submiſſion to the Time, notwithſtanding a certain *Proviſo* therein, good. 133, 134

——— If ſaid *Proviſo* therein had been to be performed within the ſaid four Days, then the Award would have been void. 134, 145

——— For the whole to be void upon any ſubſequent Act, what is awarded *in præſenti* not good, but deſtroys the whole Award. 134

——— To the pay Charges of ſuch a Suit, notwithſtanding objected to, good. 134

——— To pay ſuch Coſts of Suit as a Maſter ſhould tax, good. 134

——— To pay the Plaintiff the Charges of a Suit now depending between them, *&c.* altho' Exceptions aroſe thereupon, good. 135

The TABLE.

An Award for Defendant to pay the Plaintiff twelve Guineas and all Sums of Money, *&c.* in and about the profecution of a Plea in an Action of of the Caſe, good. *Page* 136, 137

——— For Defendant to pay the Plaintiff ſeventy-one Pounds and ten Shillings, *et omnes rationabiles Expenſas circa ſectam prædict'*, the latter Part void. 137

——— For the one to pay the other ten Pounds and the Coſts of a Suit now depending in an inferior Court, and then to give mutual Releaſes, uncertain. *Quære.* 137

——— For *A.* to make a Leaſe to *B.* and for *B.* to pay *A.* a certain yearly Rent, good. 138

——— To hold and enjoy certain Goods, paying ſo much Money, good. 138

——— For *A.* to pay twenty Pounds to *B.* upon Condition that each of the Parties ſhall acquit the other all Things ſubmitted to. 138

——— To pay Coſts of Suit in an Action of Defamation, good. 138

——— Reciting a Caſe of Joint-tenancy, *&c.* and and that one ſhould have *unam dimidiam partem ſive medietatem*, the Court held *dimidia pars ſive medietas* to be the ſame with a Moiety. 139

——— For the Removal of certain Scaffolds, but not ſaying by whom was held void, being indefinite. 139

——— To pay ſo much Money as Land is worth, void. 140

An

An Award that an Obligee ſhould not ſue the Obligor upon a certain Bond, objected to that it was not final, yet held to be good. *Page* 141
——— That each ſhall be Nonſuit in his Action againſt the other, not good, being not final. 142
——— For each Party to diſcontinue an Action againſt each other, though not final, good. 142, 164
——— For the Plaintiff to make a *Retraxit* of his Action, and that all Suits ſhall ceaſe, good. 142
——— Not to proſecute or proceed in the ſame Term in ſuch an Action, good. 142
——— That all Suits now depending ſhall ceaſe, *&c.* allowed to be final. 142
——— That all Suits ſhould ceaſe, not allowed to to be final. 143
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Ex. J. M.